

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 544

THE UNITED STATES OF AMERICA, APPELLANT

VS.

**NATIONAL CITY LINES, INC., AMERICAN CITY
LINES, INC., PACIFIC CITY LINES, INC., ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

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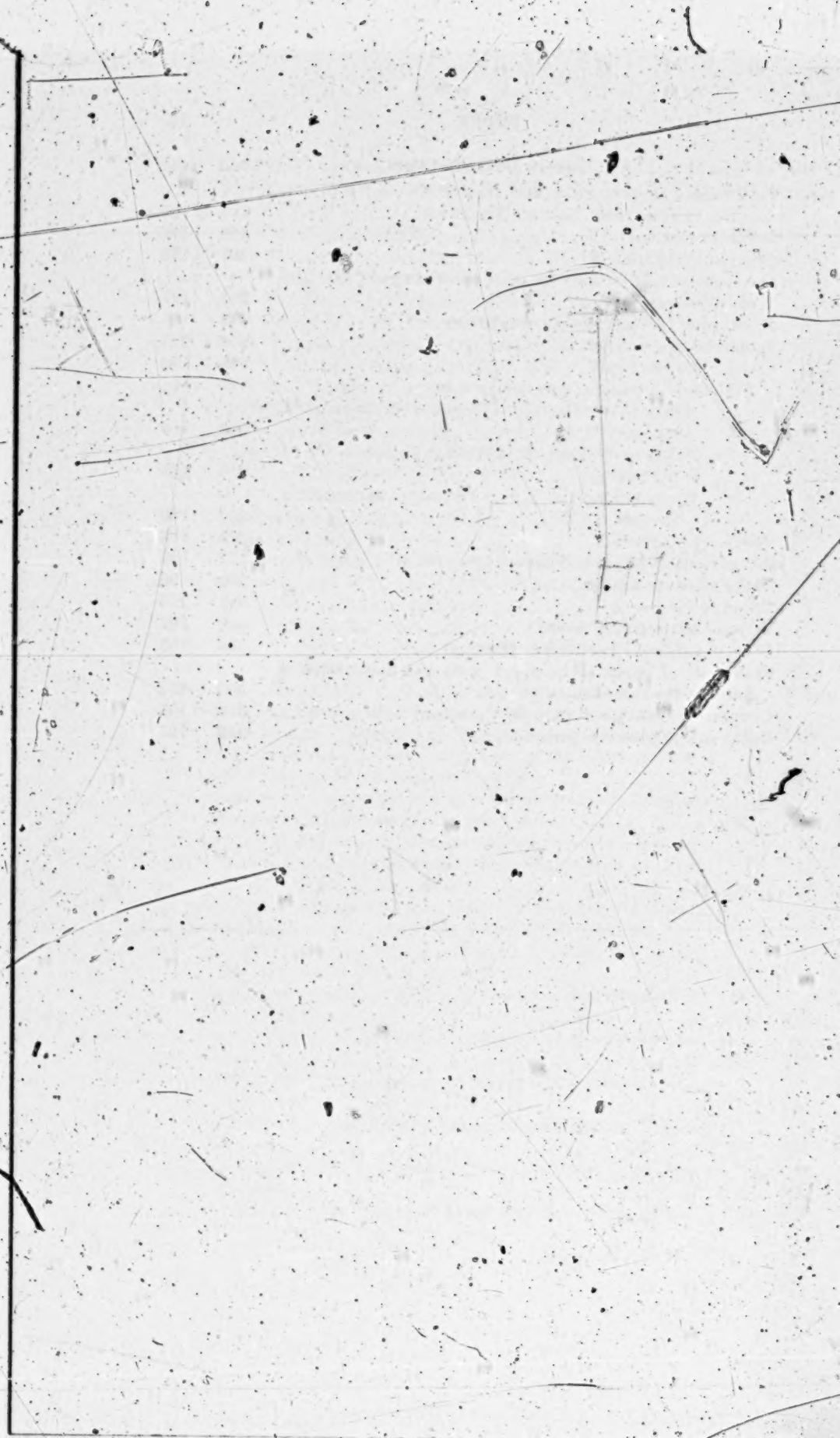
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[Citation and amended citation in usual form showing service omitted in printing.]

In The District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]

UNITED STATES OF AMERICA, PLAINTIFF v. NATIONAL LINES, INC., AMERICAN CITY LINES, INC., PACIFIC CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, FEDERAL ENGINEERING CORPORATION, DEFENDANTS

Complaint

Filed April 10, 1947

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants, and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This Complaint is filed and proceedings are instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Antitrust Act, in order to prevent and restrain violations by defendants as hereinafter alleged of Sections 1 and 2 of the Sherman Antitrust Act.

2. The defendants General Motors Corporation and Standard Oil Company of California have offices, transact business, and are found within the Central Division of the Southern District of California.

II. DEFENDANTS

3. National City Lines, Inc. (sometimes hereinafter referred to as "National") is hereby made a defendant. Said defendant is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business in Chicago, Illinois.

4. American City Lines, Inc. (sometimes hereinafter referred to as "American") is hereby made a defendant. Said defendant American is a corporation which was organized in 1943 under

the laws of the State of Delaware. Since 1943 American has been a subsidiary of defendant National and has managed and operated local transportation systems throughout the United States on behalf of defendant National. Said defendant American has its principal place of business in Chicago, Illinois.

5. Pacific City Lines, Inc. (sometimes hereinafter referred to as "Pacific") is hereby made a defendant. Said defendant Pacific is a corporation organized and existing under the laws of the State of Delaware and is a subsidiary of defendant National. Pacific has its principal place of business in Oakland, California. At various times during the period beginning on or about February 1938 and ending about August 16, 1946, defendants National, Federal Engineering Corporation, General Motors Corporation, and Firestone Tire & Rubber Company each owned a stock interest in Pacific. Since about August 16, 1946, Pacific has been a wholly owned subsidiary of defendant National. Pacific operates and manages various local transportation systems located in the States of California, Washington, and Utah on behalf of defendant National.

6. Standard Oil Company of California, a Delaware corporation (sometimes hereinafter referred to as "Standard" and as a "supplier defendant"), is hereby made a defendant. Said defendant Standard has its principal place of business in the City of San Francisco, California, and is engaged in the production and sale of petroleum products.

7. Federal Engineering Corporation, a California corporation (sometimes hereinafter referred to as "Federal"), is hereby made a defendant. Said defendant Federal is a wholly owned subsidiary of defendant Standard and has its principal place of business in the City of San Francisco, California. Federal is engaged in the business of making and managing investments on behalf of defendant Standard.

8. Phillips Petroleum Company, a Delaware corporation (sometimes hereinafter referred to as "Phillips" and as a "supplier defendant"), is hereby made a defendant. Said defendant Phillips has its principal place of business in the City of Bartlesville, Oklahoma, and is engaged in the production and sale of petroleum products.

9. General Motors Corporation, a Delaware corporation (sometimes hereinafter referred to as "General Motors" and as a "supplier defendant"), is hereby made a defendant. Said defendant General Motors has its principal place of business in the City of Detroit, Michigan, and is engaged, among other things, in the production and sale of motorbuses. On September 30, 1943, General Motors acquired the assets and assumed certain obligations of Yellow Truck and Coach Manufacturing Company, and the busi-

ness formerly carried on by said Yellow Truck and Coach Manufacturing Company has since been carried on by the GMC Truck and Coach Division of said defendant General Motors. The term "General Motors" is used herein to mean Yellow Truck and Coach Manufacturing Company for the period prior to September 30, 1943.

10. Firestone Tire and Rubber Company, an Ohio corporation (sometimes hereinafter referred to as "Firestone" and as a "supplier defendant"), is hereby made a defendant. Said defendant Firestone has its principal place of business in the City of Akron, Ohio, and is engaged in the production and sale of tires, tubes, and other rubber and automotive products.

11. Mack Manufacturing Corporation, a Delaware corporation (sometimes hereinafter referred to as "Mack" and as a "supplier defendant"), is hereby made a defendant. Said defendant Mack has its principal place of business in the City of New York, New York, and is engaged in the manufacture and sale of motor trucks and busses.

III. NATURE OF TRADE AND COMMERCE INVOLVED

12. Throughout the United States, transportation systems are operated by privately owned or publicly owned companies to provide local transportation service in cities, towns, counties, and other governmental subdivisions of the various states. Such companies purchase and use large quantities of busses, tires, tubes, and petroleum products, as well as electrically propelled streetcars in the operation of said transportation systems.

13. National is a holding company, the operations of which are directed from National's office in Chicago, Illinois. National and its subsidiaries, American and Pacific, own, control, or have a substantial financial interest in corporations, sometimes hereinafter referred to as "operating companies," which are located throughout the United States and which are engaged in the business of providing local transportation service to more than forty-two cities and other governmental divisions in sixteen states of the United States. The term "operating companies" as

11 used hereinafter is intended to include American and Pacific in the cities and governmental divisions in which said defendants operate local transportation systems. Said operating companies are located and operated in, among other places, the Cities and States of Baltimore, Maryland; Tampa, Florida; Mobile, Montgomery, Alabama; Beaumont, Port Arthur, El Paso, Texas; Aurora, Elgin, Bloomington, Normal, Champaign, Urbana, Danville, Decatur, East St. Louis, Joliet, Quincy, Illinois; Terre Haute, Indiana; Jackson, Kalamazoo, Pontiac, Saginaw,

Michigan; Canton, Portsmouth, Ohio; Burlington, Cedar Rapids, Ottumwa, Iowa; Tulsa, Oklahoma; Lincoln, Nebraska; St. Louis, Missouri; Jackson, Mississippi; Salt Lake City, Utah; Everett, Spokane, Washington; Sacramento, Eureka, Fresno, Glendale, Pasadena, San Jose, Stockton, Los Angeles, Oakland, and Long Beach, California. The operating companies which provide the local transportation service frequently use both motorbusses and electrically propelled streetcars. It is the policy of National to have the operating companies provide local transportation service by motorbusses wherever possible.

14. The operating companies of defendants National, American, and Pacific purchase and use large quantities of motorbusses, tires, tubes, and petroleum products which are manufactured and produced in various states of the United States by the supplier defendants herein and which are shipped from said places of production and manufacture across state lines and in interstate commerce by supplier defendants to the defendants National, American, Pacific, and their operating companies, located, among other places, in the states and cities of the United States named in Paragraph 13 herein. The dollar volume of such products purchased by the defendants National, American, Pacific, and their operating companies from the supplier defendants herein during the year 1945 was approximately \$5,000,000.

15. Defendant General Motors produces automobile and automotive equipment in plants located in twelve different states of the United States, including the State of Michigan. In 12 said plants, General Motors manufactures motorbusses which are sold and shipped in interstate commerce to defendants National, American, and Pacific and their operating companies. Sales of motorbusses by defendant General Motors to defendants National, American, and Pacific and their operating companies were in excess of \$25,000,000 for the years 1936 to 1946, inclusive.

16. Defendant Firestone has plants in the States of Ohio, Tennessee, and California, in which automobile tires and tubes are manufactured for and shipped to defendants National, American and Pacific, and their operating companies. Annual sales of tires and tubes by defendant Firestone to defendants National, American and Pacific, and their operating companies are now in excess of \$450,000.

17. The production of petroleum products by defendant Phillips is concentrated in the States of Texas, Oklahoma, and Kansas, from which States said products are shipped in interstate commerce into the States of Michigan, Illinois, Indiana, Oklahoma, Iowa, Nebraska, Texas, and Missouri for use by defendants National and American and their operating companies. Annual

sales of petroleum products by defendant Phillips to defendants National and American and their operating companies are now in excess of \$900,000.

18. Defendant Standard has large petroleum holdings in fields located in California, Texas, New Mexico, Colorado, Mississippi, and Louisiana, but production and refining of petroleum products by said Company is concentrated in the States of California and Texas, from which states petroleum products are shipped in interstate commerce to defendants National, American and Pacific, and their operating companies in the States of Washington, Utah, and California.

19. Defendant Mack has plants in New Jersey and Pennsylvania, in which motorbuses are manufactured for and shipped to defendants National, American and Pacific, and their operating companies. Total sales made by defendant Mack to defendants National, American and Pacific, and their operating companies during the period covered by this Complaint are in excess of three and one-half million dollars.

IV. OFFENSES CHARGED

20. Beginning on or about January 1, 1937, and continuing to and including the date of the filing of this Complaint, defendants, together with other persons to the plaintiff unknown, have engaged in an unlawful combination and conspiracy to acquire ownership, control, or a substantial financial interest in a substantial part of the local transportation companies in the various cities, towns, and counties in the various states of the United States and to restrain and to monopolize the aforesaid interstate commerce in motorbuses, petroleum products, tires, and tubes sold to local transportation companies in cities, counties, and towns in which defendants National, American, and Pacific have, or have acquired, or in the future acquire ownership, control, or a substantial financial interest in said local transportation companies, all in violation of Sections 1 and 2 of the Sherman Antitrust Act. Defendants threaten to and will continue to violate Sections 1 and 2 of the Sherman Antitrust Act unless the relief hereinafter prayed for is granted.

21. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been and are:

(a) That the supplier defendants Firestone, Standard, Phillips, General Motors, and Mack would furnish money and capital to defendants National, American and Pacific, and that said defendants would purchase and cause their operating companies to purchase substantially all of their requirements of tires, tubes, pe-

troleum products, and busses from said supplier defendants to the exclusion of products competitive therewith;

(b) That said money and capital made available by the supplier defendants would be utilized by defendants National, American, and Pacific to purchase or secure the control of, or a financial interest in local transit systems located in the various states of the United States when the securing of such control or interest in said local transit systems would further the sale of and create an additional market for the products of the supplier defendants to the exclusion of products competitive thereto;

(c) That defendants National, American, Pacific, and their operating companies, would not renew or enter into any contracts for the purchase, rental, or use of tires, tubes, motorbusses, or petroleum products from suppliers other than the supplier defendants without the consent of the supplier defendants servicing the territory wherein such products and equipment were to be used;

(d) That defendants National, American, and Pacific would not dispose of their interest in any operating company without requiring the party acquiring such operating company or equipment thereof to assume the obligation of continuing to purchase its requirements of tires, tubes, motorbusses, and petroleum products from the supplier defendants herein;

(e) That neither defendants National, American, and Pacific nor their operating companies would convert or change the equipment used by them from a type using the products sold by the supplier defendants to any other type without the consent of the supplier defendants herein;

(f) That neither defendants National, American, and Pacific nor their operating companies would purchase any new type of equipment which would use products other than the products sold by the supplier defendants without the consent of the supplier defendants herein;

(g) That the motorbus, petroleum, tire, and tube business of defendants National, American, Pacific, and their operating companies would be allocated and divided among the supplier defendants in an artificial, arbitrary, and noncompetitive manner, as is more fully set forth in Paragraph 22 (b) herein.

(h) That as National or American acquired local transportation systems in the Eastern section of the United States, this market would be allocated to and preempted by a company selling petroleum products in the Eastern section of the United States.

22. During the period of time covered by this Complaint and for the purpose of forming an effectuating the aforesaid combination and conspiracy, the defendants and other persons to the

plaintiff unknown, by agreement and concert of action, have done the things which, as hereinbefore alleged, they conspired to do, including but not limited to the following acts:

(a) Between January 1, 1939, and the date of the filing of this Complaint, the supplier defendants purchased stock in defendants National, American, and Pacific, substantially all of the proceeds of which were used by said defendants to acquire control of, or financial interest in local transit systems throughout the United States. Said stock purchased by the supplier defendants were in the approximate amounts as follows:

Name of Supplier Defendant:	Amount paid for stock purchased
Standard Oil Company of California, Federal Engineering Corporation	\$2,074,310.57
General Motors Corporation	3,190,802.32
Phillips Petroleum Company	1,574,064.82
Firestone Tire & Rubber Company	1,383,403.41
Mack Manufacturing Corporation	1,300,071.43

(b) The business of supplying tires, tubes, motorbusses, and petroleum products to the defendants National, American, Pacific, and their operating companies was and is divided among the supplier defendants as follows:

(1) The defendant Firestone was allocated and has supplied substantially all the automotive tires and tubes required by the operating companies of National, American, and Pacific;

(2) The defendants General Motors and Mack were allocated and have supplied substantially all the motorbusses used by defendants National, American, Pacific, and their operating companies. This motorbus business was divided between defendant General Motors and defendant Mack as follows: Defendant General Motors was allocated and it furnished approximately 85% of all the motorbusses, required by defendant National and its operating companies as of August 2, 1939; and approximately 42.5% of all motorbusses required by any operating company in which defendant National thereafter acquired ownership, control, or a substantial financial interest. Defendant Mack was allocated and it furnished approximately 42.5% of all motorbusses required by the operating companies in which National acquired ownership, control, or a substantial financial interest after August 2, 1939. The remaining 15% of said motorbus business was reserved for emergency purchases or for disposition as agreed upon by the supplier defendants;

(3) The petroleum products business of National, American, Pacific, and their operating companies, was and is divided in such a manner that the defendant Standard provides substantially all the petroleum products requirements of the said defendants and their operating companies doing business on the Pacific Coast and

17 in adjacent areas, including but not limited to the States of California, Washington, and Utah, and the defendant Phillips provides substantially all the petroleum products requirements of the defendants National and American and their operating companies located in the Midwestern section of the United States, including but not limited to the States of Michigan, Indiana, Illinois, Missouri, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma.

(c) Defendants National, American, and Pacific have acquired a financial interest in or control of local transportation systems in cities and areas including but not limited to the following: Los Angeles, California; St. Louis, Missouri; Baltimore, Maryland; Spokane, Washington; Salt Lake City, Utah; and Tampa, Florida.

XXV. EFFECTS OF THE CONSPIRACY

23. The combination and conspiracy hereinbefore alleged have had, as intended by the defendants, the following effects, among others:

(a) Eliminating competition from other suppliers in the sale of busses, tires, tubes, and petroleum products to defendants National, American, Pacific, and their operating companies;

(b) Substantially and unreasonably restraining interstate trade and commerce in tires, tubes, motorbusses, and petroleum products sold to local transportation systems of the United States in which defendants National, American, and Pacific have or acquire a financial interest;

18 (c) Substantially eliminating, suppressing, and excluding competition in the sale to defendants National, American and Pacific, and their operating companies, of tires, tubes, motorbusses, and petroleum products;

(d) Charging noncompetitive prices for tires, tubes, motorbusses, and petroleum products sold to defendants National, American, Pacific, and their operating companies;

(e) The nation-wide market of defendants National, American, Pacific, and their operating companies for tires, tubes, motorbusses, and petroleum products has been divided among and allocated to the supplier-defendants herein.

PRAYER

Wherefore, the plaintiff prays:

1. That the Court adjudge and decree that the defendants have engaged in an unlawful combination and conspiracy in violation of Sections 1 and 2 of the Sherman Antitrust Act;

2. That the supplier defendants be required to divest themselves of all common and preferred stock or other financial interest in the defendants National, American, Pacific, and their operating companies.

3. That all sales or investment contracts, written or oral, between the supplier defendants and the defendants National, American, Pacific, and their operating companies be declared void, unenforceable, and of no legal effect;

4. That the defendants National, American and Pacific, and their operating companies be perpetually enjoined from purchasing or otherwise acquiring any motorbusses, tires, tubes, and petroleum products used or consumed by said defendants or their operating companies without first advertising for competitive bids for such supplies, said advertising and competitive bidding

19 to be pursuant to and under a plan to be incorporated into and made a part of any final order entered by the Court in this case;

5. That the defendants National, American, and Pacific be ordered to make such disposition of their interests and holdings in local transportation companies as is necessary to restore competition and to dissipate the effects of the unlawful conspiracy; and that defendants National, American, and Pacific be permanently enjoined from acquiring, directly or indirectly, any financial interest in any local transportation system operating in any city, town, or county of any state of the United States without first obtaining the approval and authority of this Court;

6. That the defendants herein and each of them and their officers, directors, and representatives and all persons and corporations acting or claiming to act on behalf of them be perpetually enjoined and restrained from combining and conspiring to monopolize, or to restrain interstate trade and commerce of the United States in the manner and by the means described herein, and be perpetually enjoined from engaging in or participating in agreements, understandings, practices, or arrangements having a tendency to revive or continue any of the aforesaid violations of the Sherman Antitrust Act;

7. That the plaintiff have such other and further relief as the nature of the case may require and as to the Court may seem proper.

8. That plaintiff recover its costs of this suit.

9. That pursuant to Section 5 of the Sherman Act, writs of subpoena issue to each of the defendants as are not otherwise subject to service within the District demanding them and each of them to appear herein and answer each allegation of the Complaint

and to abide by and perform such acts, orders, and decrees
as the Court may make in the premises.

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James M. Carter,
JAMES M. CARTER,
*United States Attorney,
For the Southern District of California.*

21 In the District Court of the United States for the Southern
District of California, Central Division.

[Title omitted.]

Order, enlarging time within which to move or plead:
July 15, 1947.

Good cause appearing therefor, it is hereby ordered that each
and every defendant herein shall have to and including August
11, 1947, within which to file answer to, or file notice of motion
or motions with respect to, or otherwise move or plead with respect
to the complaint herein.

Dated July 15, 1947.

LEON R. YONKWICH,
United States District Judge.

22 *In the District Court of the United States Southern
District of California Central Division*

[File endorsement omitted.]

[Title omitted.]

*Notice of motions of Mack Mfg. Corp., to dismiss and for more
definite statement of bill of particulars; affidavit in support of
motion to dismiss; points and authorities.*

Filed Aug. 7, 1947

*To the United States of America; Plaintiff in the above entitled
action, and to its attorneys of record:*

You are hereby notified that on September 15, 1947, at ten o'clock a. m., in the courtroom of the United States District Judge Leon R. Yankwich, in the United States Post Office and Court House, Los Angeles, California, Mack Manufacturing Corporation, one of the defendants in the above-entitled action, will present and submit the following motions:

Motion No. 1

Said defendant moves to dismiss the bill of complaint on file in the above-entitled section on the ground that said defendant is not a resident or citizen of the Southern District of California and has no office or place of business in said District and that
23 the above-entitled Court is not a convenient forum for the trial of said action and that the most convenient forum therefor is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago). This motion is based upon the complaint on file herein, the annexed affidavit of C. W. Haseltine and affidavits filed in support of a like motion made by National City Lines, Inc. and Pacific City Lines, Inc., and annexed memorandum of points and authorities.

Motion No. 2

Said defendant moves for a more definite statement or for a bill of particulars of the matters in the complaint hereinafter mentioned upon the ground that the same are not alleged with sufficient definiteness or particularity to enable said defendant properly to prepare its responsive pleadings. The defects in the complaint complained of and the details desired are the following:

1. As to paragraph 20:

State whether it is claimed that the "substantial part of the interstate commerce there referred to comprised, geographically,

less than the whole of the United States. If it is so claimed, then describe the geographical area or areas that are comprehended within said "substantial part" that it is claimed defendants conspired to restrain or monopolize. State separately, as to each, what was the aggregate dollar volume of buses, of tires and tubes, and of petroleum products, sold in such area or areas by all bus, by all tire and tube manufacturers, and by all petroleum producers and refiners in the United States in the years 1944, 1945, and 1946.

2. As to paragraph 21:

24 (a) State whether it is claimed that the alleged combination or conspiracy has consisted of (i) concert of action independent of agreement, continuing or otherwise; (ii) agreement, continuing or otherwise independent of concert of action; or (iii) both agreement, continuing or otherwise, and concert of action.

(b) With reference to the "continuing agreement" alleged, state whether it is claimed that all defendants have been parties thereto since on or about January 1, 1937; and if not, state the periods of time during which it is claimed that each of the defendants were, and conversely were not, parties to such agreement.

(c) With reference to the "concert of action" alleged, state whether it is claimed that all defendants participated in fact in each acquisition of or attempt to secure control or acquire a substantial financial interest in, the local transportation companies referred to in paragraph 20 of the complaint; and, if not, state as to each such acquisition or attempt which defendants did or did not in fact participate therein.

(d) State whether it is claimed that there was or is one agreement or combination, or conspiracy among all defendants, or two or more agreements, combinations, or conspiracies among some or all defendants; if the latter, specify each, and the terms of each such agreement, combination, or conspiracy and the claimed participants therein.

(e) State whether it is claimed that the alleged "continuing agreement and concert of action" has any terms other than those set forth in the complaint. If so, set forth all such other terms.

(f) State separately as to each defendant and as to each alleged agreement whether it is claimed that such defendant joined or entered into an express agreement, or whether it is claimed that each such agreement is to be inferred or implied.

25 (g) State the name or names of each of the "operating companies" referred to in subdivisions (a), (c), (d), (e), (f), and (g).

(h) State whether it is claimed that any such agreement embraced "operating companies" other than those in which control

or a financial interest was purchased with money or capital contributed by the supplier defendants; and, if so, identify each such operating company.

(i) State whether it is claimed that the participation by any supplier defendant in the alleged "continuing agreement and concert of action" was dependent or conditioned upon the participation therein of any other supplier defendant or defendants; if so, state the facts in this connection.

(j) State what is meant by and define the allegations appearing in subparagraph 21 (g) that the motorbuses, petroleum, and tire and tube business of said defendants "would be allocated and divided among the supplier defendants in an artificial, arbitrary, and noncompetitive manner."

(k) State the time when and the place where it is claimed that the defendants or any of them entered into each such agreement, whether express, inferred, or implied, each such consent or refusal to consent, each such assumption and each such determination. State whether it is claimed that each or any such agreement, consent or refusal to consent, assumption or determination was reduced to writing or partially so, or was oral; and attach a copy of each such writing.

3. As to paragraph 22:

(a) State whether it is claimed that the prices paid to the supplier defendants for tires and tubes, for buses, and for petroleum products, supplied to defendants National, American and
26 Pacific, and their operating companies, or any of them were generally in excess of, or the same as, or lower than the prices at which such products were obtainable from other suppliers; and, if so, then state which and set forth the facts in that connection. State whether it is claimed that such tires and tubes, such buses, and such petroleum products were generally of an inferior, or of the same, or of a superior grade or quality to the tires and tubes, the buses, and the petroleum products which were obtainable by said defendants from other than the supplier defendants; and, if so, then state which, and set forth the facts in that connection.

(b) As to each alleged agreement made by a supplier defendant with any of said defendants or any of their operating companies, state whether or not each defendant was a party thereto, or if any defendant was not a party thereto, state when and in what manner; if at all, such defendant ratified or approved such agreement.

(c) State as to each defendant the act or acts claimed to have been committed by it which it is claimed made such defendant a participant in the conspiracies alleged in the complaint.

4. As to subparagraph 23 (a) :

State the names and addresses of the alleged "other suppliers" of buses, of tires and tubes, and of petroleum products, which it is claimed were eliminated from competition in the sale of such products to said defendants or their operating companies or any of them, and state the cities or other areas where such elimination of competition assertedly occurred.

5. As to subparagraph 23 (b) :

State when, where, by what means, and by virtue of what facts the acts and conduct of each supplier defendant substantially or unreasonably restrained trade or commerce in buses, in tires and tubes, and in petroleum products, sold to local transportation systems of the United States in which said defendants or any of them have control or a financial interest.

6. As to subparagraph 23 (c) :

State when, where, by what means, and by virtue of what facts, competition was substantially eliminated, suppressed and excluded in the sale to said defendants and their operating companies of tires and tubes, of motorbuses, and of petroleum products or any of these.

7. As to subparagraph 23 (d) :

State separately, as to motorbuses, as to tires and tubes, and as to petroleum products, what it is claimed constitute or constituted "noncompetitive prices." State whether it is claimed that the prices paid by said defendants or any of their operating companies to any of the supplier defendants were higher than, the same as, or lower than, prices for like commodities obtainable from competitors; and if so, state which. State the facts upon which the Government predicates the allegation that the prices charged to said defendants and their operating companies by the supplier defendants are or were "noncompetitive prices." State whether such alleged "noncompetitive prices" were evidenced wholly or in part in writing. If in writing or partially so, attach copies of each such writing and state when, where and by whom negotiated and entered into.

8. As to subparagraph 23 (e) :

State when, where, by what means and by virtue of what facts it is claimed that the alleged nation-wide market of said defendants and their operating companies for tires and tubes, for motorbuses, and for petroleum products "has been divided among and allocated to" the supplier defendants; and state the facts with reference to such allocation and

division and the geographical area or areas allegedly affected thereby.

9. As to paragraphs 20 and 22:

State whether it is claimed that the "other persons to the plaintiff unknown," or any of them, were employees or otherwise represented the defendants or any of them or were under the supervision of their duly authorized officers or agents, and, if so, identify such other persons and state their connection with the defendants or any of them.

Said defendant further moves that as to any of the above-requested information which the Government does not now have but hereafter acquires, it be ordered to furnish the same to counsel for said defendant immediately upon the acquisition thereof.

Said motion will be based upon the complaint in the above-entitled action and upon the memorandum of points and authorities hereto annexed.

Dated at Los Angeles, California, this 7th day of August 1947.

WRIGHT AND MILLIKAN,

LOYD WRIGHT,

CHARLES E. MILLIKAN,

By LOYD WRIGHT,

Attorneys for defendant,

Mack Manufacturing Corporation.

20. In the District Court of the United States Southern District of California Central Division

[Title omitted.]

Affidavit of C. W. Haseltine in support of motion of Mack Manufacturing Corporation for dismissal

STATE OF NEW YORK,

County of New York, ss:

C. W. Haseltine, being duly sworn, deposes and says:

I am Secretary-Treasurer of Mack Manufacturing Corporation. I make this affidavit in support of a motion by defendant Mack Manufacturing Corporation (hereinafter referred to as Mack) to transfer this proceeding on the ground of forum non conveniens from this Court to the Eastern Division of the Northern District of Illinois, in the interest of justice.

Mack is a Delaware corporation. Its principal executive offices are located in New York City. Its factories are at Allentown, Pennsylvania; Plainfield, New Jersey; New Brunswick, New Jersey; and Long Island City, New York. It has no place of

business in California. Its wholly owned subsidiary, Mack-
30 International Motor Truck Corporation, does have a sales and service branch located in Los Angeles and in other cities throughout the United States. Such branches, however, are in the nature of retail sales and service establishments, whose personnel are concerned only with local sales activities.

The records of Mack are maintained at its New York office, except for manufacturing, engineering, and research records which are kept at its factories. The records kept at sales and service branches such as the Los Angeles branch of Mack-International Motor Truck Corporation are those concerning local sales and service and no records of sales made to defendants National, Pacific, and American, or any of them, are made or kept there.

I am advised by counsel for Mack that the trial of this case will undoubtedly necessitate the production of records and documents from this defendant's executive offices, and the attendance from time to time of personnel from its New York office. It is anticipated that such witnesses as the company may call in its defense will be residents of New York or its vicinity.

Under these circumstances, the difficulties in carrying on a proper defense to this proceeding on a transcontinental scale are so great as to put this defendant at a serious disadvantage and work a substantial injustice. As far as this defendant is concerned, there is no occasion for designating Los Angeles as the place of trial. The complaint does not allege that Mack had any part in any transaction taking place in the Southern District of California. The complaint alleges the acquisition, pursuant to an agreement between American City Lines, Inc. and Federal Engineering Corporation, in December 1944, of an interest by American City Lines, Inc., in the properties of Los Angeles Railway Corporation, and a subsequent agreement between Los

31 Angeles Transit Lines and Standard Oil Company of California for the supply of fuel. Mack never purchased any stock of American City Lines and had disposed of all of its stock in National City Lines, Inc. and Pacific City Lines, Inc., before the alleged transaction in California took place.

I respectfully state that this suit should be tried in the Northern District of Illinois, Eastern Division, because that is the principal place of business of National City Lines, Inc., which has, so I am informed and believe, voluminous records and documentary evidence which it will be necessary to introduce on behalf of the defendants in this suit. In any event, it will be a great hardship and expense to Mack-Manufacturing Corporation for this case to be tried in Los Angeles. If the case is tried in Chicago, travel from New York to the place of trial will require only an

overnight trip by rail, as against a minimum of two days and three nights to Los Angeles. Chicago can be reached by air from New York in from three and one-half to four and one-half hours. Communication as well as transportation is faster and much less expensive to Chicago than to Los Angeles.

[CORPORATE SEAL]

C. W. HASELTINE.

Subscribed and sworn to before me this 14th day of July 1947.

W. Stanley Murray,

[SEAL]

W. STANLEY MURRAY,

Notary Public in and for said County and State.

Queens Co. Clk's No. 722, Reg. No. 101-M-9; N. Y. Co. Clk's No. 43, Reg. No. 189-M-9; Kings Co. Clk's No. 2, Reg. No. 183-M-9; Bronx Co. Clk's No. 2, Reg. No. 29-M-9; Richmond Co. Clk's No. 1-M.

Commission expires March 30, 1949.

32 In the District Court of the United States for the Southern District of California, Central Division

[Title omitted.]

Memorandum of points and authorities of defendant Mack Manufacturing Corporation

I

IN SUPPORT OF MOTION TO DISMISS

1. The Court has the discretionary power to refuse to assume jurisdiction of a suit and to dismiss the complaint therein when it appears that the forum in which the action is filed is not a convenient forum to try the action and that the action should, in the interests of justice, be tried in another district.

Gulf Oil Company v. Gilbert (March 10, 1947, — U. S. —, 91 L. Ed. 755, 759, 15 U. S. L. W. 4315, where the Court said (page 759, L. Ed.):

33 "Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive."

Cf. Judge Yankwich, "The New Federal Rules of Criminal Procedure With a Commentary" (1946), pages 159-160.

Williams v. Green Bay & Western R. R. Co. (1946), 326 U. S. 549, 555. Footnote, where Mr. Justice Douglas refers to a statement of the English Court, reading as follows:

"If in the whole circumstances of the case it be discovered that there is a real unfairness to one of the suitors in permitting the choice of a forum which is not the natural or proper forum, either on the ground of convenience of trial or the residence or domicile of parties, or of its being either the *locus contractus*, or the *locus solutionis*, then the doctrine of *forum non conveniens* is properly applied."

Great Western R. R. Co. v. Miller (1869), 19 Mich. 305, where the Court said:

"It is not to be denied that much hardship is likely to arise where a person is called upon to defend himself against a charge arising out of transactions occurring at a distance, and out of the jurisdiction. Witnesses cannot always be compelled
34 or induced to be present at the trial, and where a knowledge of localities becomes essential, it is impossible to obtain a view by the jury."

Goldman v. Furness Withy & Co. (D. C. N. Y. 1900), 101 Fed. 467. *Logan v. Bank of Scotland* (1906), 1 K. B. 141.

2. The fact that all major transactions which appear to be involved in the complaint herein centered about the home office of National City Lines, Inc. and its subsidiaries, in Chicago, Illinois; that substantially all the witnesses who will be called by said defendant work in and reside about Chicago and in communities that are in the Chicago area or are much more convenient to the Chicago area; that Mack Manufacturing Corporation has its office and principal place of business in New York City and that its officers and employees will doubtless be required to appear and testify as witnesses in the said action; and that substantially all the documentary evidence will be produced from those areas, justify and compel the conclusion that the convenient forum to try this suit is Chicago and not Los Angeles.

Gulf Oil Company v. Gilbert, *supra*.

3. The fact that the prayer of the complaint seeks relief which calls for continuing supervision of certain affairs of National City Lines, Inc., and its subsidiaries, where their headquarters are in Chicago, Illinois, constitutes additional grounds for invoking the doctrine of *forum non conveniens*.

Justice Black said, in *Koster v. Lumbermens Mutual Casualty Company* (March 10, 1947, 91 L. Ed. 764, 772, that:

35 "There may be rare instances in which a federal court could decline to provide an equitable remedy against multi-state corporate defendants. A prayer for relief which requires the appointment of a receiver or the detailed and continuing super-

vision of the affairs of a defendant corporation whose headquarters is beyond the jurisdiction of the court would in my view constitute such a situation."

II

In support of motion for more definite statement or for bill of particulars

1. Failure to state separate claim in separate causes of action, rendering complaint uncertain, while no longer ground for dismissal under new Rules, nevertheless entitles defendant to a more definite statement or bill of particulars.

(a) Better practice even under new Rules is to state claims separately.

In *Brooks Brothers v. Brooks Clothing of California* (D. C. Cal. 1945), 60 Fed. Supp. 442, 447, (affirmed C. C. A. 9, 1947, 158 Fed. (2d) 798, cert. den. — U. S. —), Judge Yankwich said that:

"* * * While, since the enactment of the Federal Rules of Civil Procedure * * *, the failure to state claims separately is no longer a ground for dismissal, it [is] the better practice and more consonant with the requirement of the rules and the spirit of the simpler procedure they augured, to state them separately."

36 *Ford Motor Company v. McFarland*, (D. C. Wash. 1939, Yankwich, J.), 39 Fed. Supp. 303.

2. Plaintiff's failure to state its claims under Section 1 separately from its claims under Section 2 of the Sherman Act renders the complainant uncertain in material respects and requires a more definite statement or bill of particulars as specified in the accompanying motion. Particularly with respect to complaint, paragraph 20, page 7.

3. Defining the "part" of interstate trade and commerce charged to be restrained or monopolized under Section 2 of the Sherman Act is an important issue in the case.

Indiana Farmers Guide Publishing Co. v. Prairie Farmers Publishing Co. (1934), 293 U. S. 268, 269. *Patterson v. United States* (C. C. A. 6, 1915), 222 Fed. 599, 621-622, cert. den. 238 U. S. 635.

(a) Identification of the "part" of the interstate trade and commerce it is claimed is restrained or monopolized and the volume of business of the supplier defendants and of their competitors in connection therewith, is necessary in view of the fact that the complaint in this regard is uncertain and indefinite.

Lowe v. Consolidated Edison Company, Inc. (D. C. N. Y. 1940), 4 F. R. S. 208, 209, where District Judge Leibell said:

"Plaintiffs should state generally what portion of the trade in electrical appliances defendants have attempted to restrain or

monopolize. It is almost axiomatic in the field of Antitrust Law that only unreasonable restraints of trade are bad and a statement of the portion of the trade restrained may very well have a bearing upon the application of this principle to this case. The portion which defendants are alleged to have combined to restrain should also be stated. As the allegation now stands, it is applicable to the entire trade in such appliances and defendants will be put to an unnecessary burden in preparing their defense if the claim in fact is limited to only a portion of the trade."

4. A defendant in an antitrust suit is entitled to be advised in the complaint as to the substance of the combination, including the times and places where the alleged conspiracy was made and the detail of what each defendant is charged with doing to bring him within the combination.

United States v. Griffith Amusement Company (D. C. Okla. 1940), 1 F. R. D. 229, 232, where, in an equity suit under the Sherman Act, Judge Vaughn said:

"The motions for bills of particulars ask that the time and place be named where these combinations were formed and that the complaint state the specific exhibitor and specific distributor who participated in the formation of any particular conspiracy.

"It is admitted that these are blanket allegations. They cover a wide territory, many theatres, many different films, and many exhibitors and distributors. The plaintiff objects to the bills of particulars for the reason that it would make the pleadings too voluminous and, furthermore, that many of the facts will have to be developed by discovery before the plaintiff can state who participated in the various agreements or what part anyone had in the formation of the combinations of conspiracies.

"This may be true and it is evident that the pleadings will be very voluminous. However, the plans and specifications for this structure were selected by the plaintiff and if it brought an action which, under the rules of civil procedure and under the federal statutes, necessitates voluminous pleadings, the defendants are not chargeable therewith."

International Tag & Sales Book Company v. American Sales Book Company (D. C. N. Y. 1943), 7 F. R. S. 63, 65, where District Judge Bright said:

"The following particulars will be granted to the moving defendants:

"1. As to paragraphs 21 (e) and 25 (d) state whether it is claimed the agreements therein alleged were oral or written or partly one or the other, and the dates when made and the parties

thereto so as to enable the moving defendants to identify each thereof.

"2. As to paragraphs 14, 21, and 25 (b), (d), (g), and (h) specify the period of time during which each of the acts or activities alleged therein are claimed to have been performed by each moving defendant.

"3. Identify the persons or concerns referred to in paragraph 21 (c) as any other independent; in 21 (d) as bogus or alleged independent companies; in 21 (e) as bogus independents; in 21 (f) as purchasers; in 21 (g) as plaintiff's customers; in 25 (b) as another manufacturer of salesbooks and manifold books not a member of the illegal combine; and in 25 second paragraph (q) as other members."

Lowe v. Consolidated Edison Company, Inc. (D. C. N. Y. 1940), 4 F. R. S. 208, 209, where District Judge Leibell said:

"In cases founded upon the Antitrust Act which are dependent for final relief upon the conformation of numerous facts to such flexible concepts as monopoly, interstate commerce, restraint of trade, etc., which are of serious and immediate concern to commercial enterprise, I think that the court should require from plaintiffs in their pleading a statement of facts sufficiently complete to mitigate the dangers that might result if these cases proceeded upon the shaky foundation of a vague and somewhat indefinite complaint. *United States v. Griffith Amusement Co.*, 1 F. F. D. 229 (3 Fed. Rules Serv. 12e. 231, Case 5.) I am, therefore, inclined to consider liberally defendants' requests for particulars of plaintiffs' claim * * *

40. *Dean Rubber Manufacturing Company v. Schmidt*, (D. C. Ill. 1943), 7 F. R. S. 71, 72, where District Judge Holly said: " * * * I am of the opinion that plaintiff should state in a bill of particulars where the various acts of which they complain were committed."

Respectfully submitted.

WRIGHT AND MILLIKAN,
LOYD WRIGHT,
CHARLES E. MILLIKAN,

By LOYD WRIGHT,

*Attorneys for defendant,
Mack Manufacturing Corporation.*

Received copy of the within notice this 7th day of August, 1947.

W. C. DIXON,
H. S.

Attorney for U. S. Government.

[File endorsement omitted.]

22

U. S. VS. NATIONAL CITY LINES, INC., ET AL.

41

In the District Court of the United States for the Southern
District of California, Central Division

[Title omitted.]

Joinder of defendants, Standard Oil Company of California and Federal Engineering Corporation. In motions Nos. 1 and 2 filed by defendants, National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.

Filed Aug. 11, 1947

Defendants, Standard Oil Company of California and Federal Engineering Corporation join in Motion No. 1 (motion to dismiss) and Motion No. 2 (motion for a more definite statement or for bill of particulars) filed herein by defendants, National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.,

42 and noticed for hearing before this Honorable Court on September 15, 1947. In joining in said motion said defendants adopt and reassert the same and the ground therefor as well as all affidavits filed in support thereof and the memorandum of points and authorities supporting the same.

Defendants, Standard Oil Company of California and Federal Engineering Corporation, reserve the right at any stage of the proceedings herein, to move to dismiss the complaint or any part thereof on the ground that it fails to state a claim upon which relief can be granted.

Dated August 11, 1947.

LAWLER, FELIX & HALL,
FELIX T. SMITH,
JOHN M. HALL,

By John M. Hall,
JOHN M. HALL,

Attorneys for defendants, Standard Oil Company of California and Federal Engineering Corporation.

Received copy of the within Joinder of Defendants this — day of August, 1947.

WILLIAM C. DIXON,
Special Assistant to the Attorney General,

JESSE R. O'MALLEY,

LEONARD M. BESSMAN,

Special Attorney

By WILLIAM C. DIXON,

L. M.

Attorneys for Plaintiff.

43 In the District Court of the United States Southern
District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Affidavit in support of motion to dismiss on the ground that suit should not be tried in this court but, if tried at all, it should be in the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago)

Filed Aug. 11, 1947

STATE OF ILLINOIS,

County of Cook, ss:

E. Roy Fitzgerald, being duly sworn, deposes and says:

1. I am a Director and President of defendant National City Lines, Inc. (hereinafter referred to as "National"). I was a director and Chairman of the Board of American City Lines, Inc. (hereinafter referred to as "American") prior to its merger into National in 1946. Pacific City Lines, Inc. (hereinafter referred to as "Pacific"), a subsidiary of National, is also a defendant.

2. I make this affidavit on behalf of defendant National and defendant Pacific. This affidavit is made in support of a motion of said named defendants for an order to dismiss the Complaint on the ground that in the interest of justice this suit should be tried in the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

44 3. This affidavit sets forth some of the more material facts respecting the history, business, and operations of National, and the manifest hardship to the defendants, and particularly to National, of trying the suit in the Southern District of California. The transactions which appear to be the subject of the Complaint took place chiefly in Chicago, Illinois, and none of them took place in this District, as appears from the details set forth hereinafter. Any trial of this proceeding in Los Angeles would cause substantial hardship to the defendants, and especially the stockholders of National and of the other defendants. Substantially all evidence, documentary and personal, which the defendants believe can possibly be relevant to the issues of this case, are located far distant from Los Angeles. It would be extremely difficult and expensive, and impossible in some instances, to obtain the attendance in Los Angeles of the many witnesses whose presence will be essential to a full and fair trial. The necessary presence for several months at a trial in Los Angeles, far removed from the main office of National in Chicago, of the chief executive

officers of National and other key employees of National, would prevent their attention to the general business of National and work a great hardship upon it and its stockholders. Most of, if not all, the essential witnesses of all defendants, including National, are engaged in business or reside far distant from Los Angeles. Even to the extent that witnesses and documents are brought before the Court in Los Angeles, great and unnecessary expense will be incurred by the defendants. The Government has an office of the Antitrust Division in Chicago and no substantial hardship will be borne by it if the trial is held there.

4. The following facts alleged in the Complaint are true with respect to the residences or principal places of business of each defendant:

(i) National has its principal place of business in Chicago, Illinois;

(ii) American, prior to its merger into National in 1946, had its principal place of business in Chicago, Illinois;

(iii) Pacific has its principal place of business in Oakland, California;

(iv) The chief officers of National reside in or about Chicago, Illinois;

(v) Defendant General Motors Corporation (hereinafter referred to as "General Motors") has its principal place of business in Detroit, Michigan;

(vi) Defendant Firestone Tire & Rubber Company (hereinafter referred to as "Firestone") has its principal place of business in Akron, Ohio;

45 (vii) Defendant Mack Manufacturing Corporation (hereinafter referred to as "Mack") has its principal place of business in New York, New York;

(viii) Defendant Phillips Petroleum Company (hereinafter referred to as "Phillips") has its principal place of business in Bartlesville, Oklahoma;

(ix) Defendant Standard Oil Company of California (hereinafter referred to as "Standard") has its principal place of business in San Francisco, California;

(x) Defendant Federal Engineering Corporation (hereinafter referred to as "Federal"), a subsidiary of Standard, has its principal place of business in San Francisco, California.

Thus, not one of the defendants has its principal place of business or resides in the District where the Complaint was filed.

Firestone, General Motors, Mack, Phillips, and Standard are sometimes hereinafter referred to as the "suppliers," or "the supplier defendants."

5. The Complaint does not allege that the alleged combination and conspiracy was formed or agreed upon or entered into in the

Southern District of California. The only reference to this District is an allegation that General Motors and Standard "have offices, transact business, and are found within the Central Division of the Southern District of California." (Par. 2.)

6. Business of National and its relation to the suppliers.

National is, by the Complaint, alleged to be the central defendant and its relationships with the other defendants is attacked by the Complaint. It was with National that all the suppliers are alleged to have made the agreements which are complained of, and National is alleged to have purchased interests in operating companies which carried out the alleged concert of action. National is charged with having participated in each of the acts which are alleged to form the concert of action which is complained of.

National is a Delaware corporation. It was formed in 1936 at the instance of my four brothers and myself who then turned over to it a few bus properties in the middle west which we had owned or controlled. We became, and always have been, directly or indirectly, the owners of the largest block of its common stock and its principal executive officers. I have been its President since its formation.

46 National was founded and has been developed on the policy of buying interests in transit systems, which were totally or partially obsolete, and then converting these systems into modern bus transportation units.

National has always been and now is managed and operated from Chicago. Its principal place of business has always been and now is Chicago.

Investigations respecting transit operating companies throughout the United States were directed from Chicago by National and American. All important policies and decisions in connection with the purchase of interests in operating companies were made by National or American in Chicago.

In practically every instance all National's one hundred percent subsidiaries, with the exception of the subsidiaries of Pacific, are now, and over the whole life of National have been, closely supervised from Chicago. Their books of account have been kept in Chicago, their purchases of supplies have been arranged in Chicago, and all other operations have been supervised in Chicago. The relation of National with the suppliers, in respect to the operating companies in which National owned less than a 100% interest, has always been carried on in Chicago.

7. So far as defendants are presently advised the Complaint appears to be based essentially upon (1) separate or individual contracts under which the supplier defendants severally invested in the securities of National or American, and (2) contracts under

which operating companies (in which National, American and Pacific were or are interested) purchased certain of their requirements of motorbuses, tires and tubes, and petroleum products from the supplier defendants.

(a) All such contracts with National or American (for investment and for requirements) were separately and individually negotiated and agreed upon principally in Chicago and in part at the main offices of the respective supplier defendants.

After such contracts were approved and executed on behalf of National or American in Chicago, they were severally executed by the supplier defendants, respectively, at their offices in Akron, Ohio (Firestone); Pontiac, Michigan (General Motors); New York, N. Y. (Mack); Bartlesville, Oklahoma (Phillips); and San Francisco, California (Standard).

47 (b) All transactions for the purchase of preferred or common stocks of National or American were negotiated and agreed upon in Chicago. The stocks so purchased were issued from, delivered to and paid for by the supplier defendants, respectively, in Chicago. Likewise, the retirement of the preferred stock in National owned by the supplier defendants, and the exchange of their stock in American for National's stock in connection with the merger of American into National, were carried out in Chicago.

8. Pacific City Lines.

The operations of Pacific are and were relatively unimportant as compared with the aggregate of the transactions upon which the Complaint appears to be based. Pacific was organized in May 1938, at the instance of National City Coach Lines, Inc. (a corporation whose stockholders were located in or about Chicago and whose business was conducted from Chicago), Standard, and General Motors. The corporation was organized as a Delaware corporation and until April 1940 its main office was in Chicago from which place its affairs were conducted. In April 1940 the main office was changed to Oakland, California, and in December 1940 National sold its entire stock interest in Pacific and withdrew from any participation in its affairs. From December 1940 until July 1946, most of the stock of Pacific was owned by certain of the supplier defendants. In July 1946, pursuant to an agreement made on March 26, 1946, stock of National was issued in exchange for all outstanding stock of Pacific, and National then became interested in and directed the operations of Pacific.

From its formation until April 1940, Pacific was managed and operated from Chicago by National in much the same manner as National managed and supervised its other subsidiary companies. Its stock issued prior to April 1940, including the shares originally subscribed for by certain of the suppliers, was issued

from and paid for in Chicago, and up to April 1940 all its directors' meetings were held in Chicago, including meetings at which the original subscription agreements of the suppliers were approved. After April 1940, Pacific was managed and operated from Oakland and all meetings of directors were held in that city with the exception of five or six held in San Francisco and one in Pontiac, Michigan. The supply contracts between Pacific and certain of the suppliers were prepared and executed by the suppliers at their main offices (Akron, Detroit, or Pontiac, and San Francisco) and were executed by Pacific in Oakland.

At the present time, the general policies of Pacific are directed from Chicago. The dealings and negotiations between Pacific and the suppliers are carried on principally in Chicago, or at the home offices of the particular suppliers.

48 9. Proof to be offered at trial.

I am, advised by counsel that the trial will involve an extensive inquiry into the history, business, and operations of National from its organization in 1936 up to the present time and, in addition, the complete relationship between National and the five suppliers during this period, and possibly the relationship between National and other supplier companies who operate outside the Southern District of California. Some of the matters which will be the subject of inquiry and testimony will be the organization of National in Chicago in 1936; the growth and operation of National in Chicago over the next ten years; its relationship and contracts with the supplier defendants and other supply companies, all of which took place in Chicago or stemmed from Chicago; its financing in and from Chicago; and the purchase of and its direction and supervision of operating companies, all of which took place in and from Chicago. This proof will require the production of a mass of contracts, correspondence, and other data. It will require testimony concerning the meetings of the Boards of Directors of National and American, all which meetings, with the exception of a few, were held in Chicago; testimony respecting investigations made by National of many operating companies throughout the United States and its acquisition of interests in certain of them, all which investigations were directed from Chicago, and records of which are located in Chicago; and testimony respecting the purposes and intentions of National in making arrangements with the suppliers and the effect of such arrangements upon the business of National and upon the transportation industry generally, all which must be proved principally from records located in Chicago or from testimony of persons residing in or near Chicago. These are but a few of the many matters to be developed at the trial, and they suggest a great many others which will necessarily be gone into.

10. Documents to be used at trial.

The documents which were subpoenaed by the Government from National in the investigation which preceded the filing of the Complaint clearly reflect that the proof at the trial will be based primarily on papers and documents located in Chicago and the testimony of persons residing in or near Chicago.

Commencing in September 1946, Grand Jury subpoenas were served on National and others which called for hundreds of papers, records, documents, analyses, and compilations. National, for itself and its thirty-four Chicago operated subsidiaries, furnished the Government with a mass of papers and documents taken from files in Chicago.

49 The documents and papers furnished by National consist, among others, of the contracts between National or American and their Chicago subsidiaries, and the suppliers; inter-office memoranda relating to such contracts which were written chiefly in Chicago; correspondence respecting the contracts written to or from Chicago; contracts, assignments, bills of sale, petitions to and decisions of state regulatory bodies relating to the acquisition of interests in operating companies; and various detailed statistical compilation, schedules, and tabulations. These compilations and schedules were prepared from numerous books of account and other corporate records of National in Chicago. The preparation of such compilations and schedules took several weeks and the work of many accountants, bookkeepers, clerks, and other employees of National employed in Chicago. All persons engaged in the preparation of such compilations and schedules live in or about Chicago.

St. Louis Public Service Company, which operates in St. Louis, Missouri; Baltimore Transit Company, which operates in Baltimore, Maryland; Los Angeles Transit Lines, which operates in Los Angeles, California; and Pacific, also furnished the Government many documents and papers. Of such documents only a small number were furnished by Los Angeles Transit Lines, of which only a few concerned the relationship between the Los Angeles company and its suppliers.

11. Trial in the Southern District of California will work a great hardship upon the Defendants, and particularly on National.

I have been advised by counsel, and it is my belief, that (i) the trial of this action will probably take a number of weeks; (ii) in view of the allegations which cover a period of over ten years since 1937 it will be necessary in the interest of justice that there be made available to the Court full and complete testimony as to the many matters which will be relevant in determining the allegations; (iii) the trial of this suit will necessarily require a mass of

documentary evidence, consisting of agreements, memoranda, letters, statistical compilations, and other records, from the files of National, the five suppliers, and other companies; (iv) the documentary evidence, which will be offered by the Government as well as the various defendants, will itself necessarily require the supporting and clarifying testimony of many witnesses; (v) in addition to such documents and the witnesses in connection therewith, there will be the extended verbal testimony of a great many other witnesses; (vi) while it is impossible now to forecast
50 how many witnesses will be called to testify; it is likely that the number will be at least one hundred; and (vii) many essential witnesses will come from various parts of the country, but largely from the Chicago area, and only a small number, if any, from Los Angeles.

12. Since all important meetings and decisions affecting National, American, and their subsidiary companies have been held or made in Chicago, this will require the presence in Los Angeles of a large part of their operating force. The executive officers of National must necessarily attend throughout the trial. Among others who will have to attend are myself, Foster Beamsley, Vice President; Ed Fitzgerald, Vice President and Treasurer; E. V. Anderson, Vice President and Controller; J. M. Schramm, Secretary and Assistant Treasurer; and G. L. Walker, Assistant Secretary, all officers of National, who have their offices and who reside in or about Chicago. A number of key employees on the accounting staff of National who are familiar with the financial and accounting matters will undoubtedly be forced to come to and stay in Los Angeles throughout the trial.

The remoteness of Los Angeles for the many individuals who are familiar with the subject matters of this proceeding will greatly handicap National, and presumably the other defendants, in preparing for trial and obtaining the testimony of witnesses whom is regards as essential in fully developing all pertinent facts.

The trial of the suit in Los Angeles will involve a great financial expense to National. In addition to all the executive staff and employees who must necessarily come to Los Angeles and stay throughout the trial, there will be the expense of preparation in Los Angeles. This preparation will necessitate the constant attention of Los Angeles counsel in addition to the general counsel for National, and in the course of preparation many of the executives and officers and employees of National will necessarily have to come to Los Angeles and spend considerable periods of time. The expense of travel to and from Los Angeles alone will be substantial.

Thus a trial in Los Angeles will cause substantial injury to the operations of National and the transit companies whose operations it supervises and will put upon National a very large financial burden. All this could be eliminated by a trial in Chicago.

13. If any offenses were committed at all, they were committed principally in Chicago and partly at the places where the various suppliers have their main offices. The alleged
51 offenses were not committed in Los Angeles or in the Southern District of California. This proceeding should not be tried in Los Angeles, which has no significant relationship to the matters involved, but should in the interest of justice be tried in the United States District Court in Chicago, where the offenses alleged were for the most part committed, if committed at all. Chicago, and least of all Los Angeles, is the place where there is the greatest access to all the sources of proof, documentary, verbal, or otherwise. Chicago, and least of all Los Angeles, is the place where it will be possible to obtain the attendance of witnesses at the least expense to the defendants and the Government. Los Angeles is the place where the trial would result in the greatest hardship to the defendants and their many stockholders, without any corresponding benefit to the Government.

14. For the many reasons above set forth, I respectfully pray this Court in the sound exercise of its discretion to dismiss the Complaint herein, so that the trial of this suit may proceed, if the Government is so advised, in the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

E. Roy Fitzgerald.
E. ROY FITZGERALD.

Sworn to before me this 16th day of June 1947.

[NOTARIAL SEAL]

MARY E. JOYCE, *Notary Public*.

52 In the District Court of the United States for the Southern District of California Central Division

[File endorsement omitted.]

[Title omitted.]

Affidavit of C. Frank Reavis in support of motion to dismiss

Filed Aug. 11, 1947

STATE OF NEW YORK,

County of New York, ss:

C. Frank Reavis, being duly sworn, deposes and says:

1. I am, and at all times hereinafter mentioned, have been a member of the Board of Directors and a member of the Executive

Committee of the Board of Directors of National City Lines, Inc., a corporation existing under the laws of the State of Delaware (hereinafter called National), which is named a defendant herein. I make this affidavit in support of a motion to quash the purported service of process herein on April 16, 1947, upon J. M. Schramm, as the purported Secretary of American City Lines, Inc. (hereinafter called American).

2. Paragraph 4 of the complaint names American a defendant and alleges that it is a corporation organized in 1943 under the laws of the State of Delaware and has been a subsidiary of National since 1943.

3. On July 15, 1946, American was duly merged into National pursuant to the provisions of Section 59 of the General Corporation Law of the State of Delaware. (Revised Code of 1935, as amended) and by virtue of an Agreement of Merger, Dated May 29, 1946, between National, American, and Andover Finance Company, also a Delaware corporation. Said agreement was duly authorized, approved, signed, and acknowledged, and on July 15, 1946, was duly filed in the offices of the Secretary of State of the State of Delaware and duly recorded in the office of the Recorder of Deeds for the County of New Castle, in the State of Delaware (in which office both National and American had their original Certificates of Incorporation recorded), and on July 15, 1946, was also duly recorded in the office for the Recording of Deeds in the County of Kent (in which office Andover Finance Company had its original Certificate of Incorporation recorded), all pursuant to the provisions of said Section 59 of said General Corporation Law. A copy of said Agreement of Merger, certified by the Secretary of State of the State of Delaware and by the respective Recorders of New Castle and Kent Counties in the State of Delaware, is hereto attached, marked "Exhibit A."

4. Section 59 of the Delaware General Corporation Law provides that

54 " * * * a certified copy thereof shall be evidence of the agreement and act of consolidation or merger of said corporations, and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation or merger."

5. Section 60 of the Delaware General Corporation Law provides:

"When an agreement shall have been signed, acknowledged, filed, and recorded, as in Section 59 * * * of this Chapter is required, for all purposes of the laws of this State the separate existence of all the constituent corporations, parties to said agreement, or of all such constituent corporations except the one into

which the other or others of such constituent corporations have been merged, as the case may be, shall cease * * *

6. As a result of the foregoing, American ceased to exist on July 15, 1946, and this court cannot obtain jurisdiction over it by service of process on its purported Secretary.

7. On July 15, 1946, a new corporation having the name of American City Lines, Inc., was created under the laws of Delaware for the sole purpose of protecting the corporate name against use or abuse by others. A copy of the Certificate of Incorporation, certified by the Secretary of State of the State of Delaware of said new corporation is hereto annexed, marked "Exhibit B."

55 Such new corporation was organized with an initial capital of \$1,000. It has no other assets and has done no business whatsoever. It was not in existence prior to July 15, 1946. It could not be the corporation described in the complaint as American. It could not participate in any of the transactions described in the complaint.

8. I pray, therefore, for an order quashing the purported service of process herein upon American and dismissing the complaint as to it.

C. FRANK REAVIS.

Sworn to before me this 17th day of June 1947.

[SEAL]

HELEN WORTH,
Notary Public, State of New York,
Residing in New York County.

N. Y. Co. Clk's No. 290 Reg. No. 452-W-8; Kings Co. Clk's No. 183 Reg No. 298-W-8.

Commisison Expires March 30, 1948.

56

Exhibit "A" to affidavit

NATIONAL CITY LINES, INC.

Agreement of Merger between National City Lines, Inc., American City Lines, Inc., and Andover Finance Company, Dated May 29, 1946

57

Agreement of Merger dated this 29th day of May 1946, made by and between National City Lines, Inc., party of the first part, and American City Lines, Inc., party of the second part, and Andover Finance Company, party of the third part, all being corporations organized and existing under and by virtue of the laws of the State of Delaware; witnesseth that

Whereas, the Board of Directors of each of said corporations, parties hereto, in consideration of the mutual agreements of said

corporations as set forth herein, do deem it advisable and generally to the welfare of said corporations and their respective stockholders that National City Lines, Inc., the party of the first part, merge into itself American City Lines, Inc., and Andover Finance Company and that American City Lines, Inc., the party of the second part, and Andover Finance Company, party of the third part, should be merged into National City Lines, Inc., the party of the first part, as authorized by the statutes of the State of Delaware, under and pursuant to the terms and conditions hereinafter set forth; and

Whereas, said National City Lines, Inc., whose certificate of incorporation was filed in the office of Secretary of State on February 5, 1936, and recorded in the office of the Recorder of Deeds for the County of New Castle, on February 5, 1936, has an authorized capital stock consisting of 1,050,000 shares, divided into 50,000 shares of preference stock of the par value of \$50 per share and 1,000,000 shares of common stock of the par value of 50¢ per share, of which capital stock 609,052.5 shares of common stock (including 9,052.5 shares thereof held by Andover Finance Company) and no shares of preference stock are now issued and outstanding; and

Whereas, said American City Lines, Inc., whose certificate of incorporation was filed in the office of Secretary of State on August 31, 1943 and recorded in the office of the Recorder of Deeds for the County of New Castle, on August 31, 1943, has an authorized capital stock consisting of 320,000 shares, divided into 60,000 shares of preferred stock of the par value of \$100 each and 260,000 shares of common stock of the par value of \$1 each, of which capital stock 47,500 shares of such preferred stock, consisting of 9,375 shares of \$5 Cumulative Preferred Stock, Series A and 38,125 shares of \$5 Cumulative Preferred Stock, Series B, and 253,333 shares of such common stock are now issued and outstanding; and

Whereas, Andover Finance Company, which is the surviving company under an Agreement of Merger and Consolidation between National Consumer-Credit System, Inc. and Chicago Citizens System, Inc., which was filed in the office of Secretary of State of the State of Delaware on January 30, 1932, and recorded in the Office of the Recorder of Deeds, County of Kent, on January 30, 1932, has an authorized capital stock consisting of 77,546 shares, divided into 35,955 shares of Preferred Stock of the par value of \$5 per share and 41,591 shares of Common Stock of the par value of \$1 per share, of which capital stock 3,442 shares of such Preferred Stock, designated as 6% Cumulative Preferred Stock and 40,587½ shares of such Common Stock are now outstanding; and

58

Whereas, the principal office of said National City Lines, Inc. in the State of Delaware is located at No. 100 West 10th Street, in the City of Wilmington, County of New Castle, and the name and address of its resident agent is The Corporation Trust Company, No. 100 West 10th Street, Wilmington, Delaware; and the principal office of American City Lines, Inc. in the State of Delaware is located at No. 100 West 10th Street, in the City of Wilmington, County of New Castle, and the name and address of its resident agent is The Corporation Trust Company, No. 100 West 10th Street, Wilmington, Delaware; and the principal office of Andover Finance Company in the State of Delaware is located at Nos. 19-21 Dover Green, in the City of Dover, County of Kent, and the name and address of its resident agent is United States Corporation Company, Nos. 19-21 Dover Green, Dover, Delaware; now, therefore,

The corporations, parties to this agreement, by their respective Boards of Directors, in consideration of the mutual covenants, agreements and provisions hereinafter contained, have agreed and do hereby agree with each other that National City Lines, Inc. merge into itself American City Lines, Inc. and Andover Finance Company and likewise that American City Lines, Inc. and Andover Finance Company shall be merged into National City Lines, Inc. pursuant to Section 59 of the General Corporation Law of the State of Delaware, and do hereby agree upon and prescribe the terms and conditions of said merger and of carrying the merger into effect as follows:

1. National City Lines, Inc. hereby merges into itself American City Lines, Inc. and Andover Finance Company and likewise American City Lines, Inc. and Andover Finance Company shall be and each of them hereby is merged into National City Lines, Inc. which shall be the surviving corporation, hereinafter usually referred to as "the Corporation."

2. The facts required to be set forth in a certificate of incorporation of a corporation incorporated under the laws of the State of Delaware which can be stated in the case of the merger provided for in this agreement are as follows:

First, The name of the Corporation is and shall be National City Lines, Inc.

Second, The principal office of the Corporation in the State of Delaware is and shall be located at No. 100 West 10th Street, in the City of Wilmington, County of New Castle. The name and address of its agent is and shall be The Corporation Trust Company, No. 100 West 10th Street, Wilmington, Delaware.

Third, The nature of the business and the objects and purposes to be transacted, promoted and carried on are to do any and all of

the things herein mentioned as fully and to the same extent as natural persons might or could do, viz.:

(a) To subscribe for, or cause to be subscribed for, buy, own, hold, purchase, receive, or acquire, and to sell, negotiate, guarantee, assign, deal in, exchange, transfer, mortgage, pledge, or otherwise dispose of, shares of the capital stock, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, acceptances, drafts, and evidences of indebtedness issued or created by any government or by any political subdivision thereof, or by any other corporations, joint stock companies, or associations, whether public, private, or municipal, or any corporate body, and while the owner thereof to possess and to exercise in respect thereof all the rights, powers, and privileges of ownership, including the right to vote thereon; to guarantee the payment of dividends on any shares of the capital stock of any of the corporations, joint stock companies or associations in which this Corporation has or may at any time have an interest, and to become surety in respect of, endorse, or otherwise guarantee the payment of the principal of or interest on any scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness, issued or created by any such corporations, joint stock companies, or associations; to become surety for or guarantee the carrying out and performance of any and all contracts, leases and obligations of every kind of any corporations, joint stock companies, or associations, and in particular of any corporation, joint stock company or association any of whose shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness, are at any time held by or for this Corporation, and to do any acts or things designed to protect, preserve, improve, or enhance the value of any such shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness.

(b) To purchase or otherwise acquire, own and dispose of any part or all of the capital stock and other securities of any corporation engaged in the transportation of passengers by omnibuses, street-cars, trackless trolleys or other vehicles, whether propelled by gas, electricity or other motive power, on and over streets, roads and highways within and without cities, villages and other municipal corporations, and over private rights of way, and to make payment therefor by the issuance of its capital stock of any class, bonds, debentures, and notes, and other obligations or in any other manner permitted by law and in connection therewith to assume any or all of the bonds, mortgages, leases, contracts, indebtedness, liabilities, and obligations of any such corporation.

(c) To organize, incorporate, reorganize, merge, consolidate, and finance any corporation engaged or formed for the purpose of engaging in transportation business as defined in paragraph (b) hereof and to underwrite, subscribe for, and endorse the bonds, stocks, securities, debentures, notes, or undertakings of any such corporations and to make any guaranty in connection therewith or otherwise for the payment of money or for the performance of any obligation or undertaking and to do any and all things necessary or convenient to carry out of such purposes into effect.

(d) To render managerial, supervisory, accounting, and other services to corporations engaged in transportation business as defined in paragraph (b) hereof, provided that nothing contained in this paragraph or any other paragraph in this Article Third shall be construed to authorize or empower this corporation to transport or undertake or engage in the business of transporting passengers or property for the general public, either for compensation or otherwise.

(e) To acquire by purchase, lease, or otherwise, take, own, hold, sell, exchange, transfer, lease, repair, maintain, improve, mortgage, and in any other manner deal in and deal with real property, mixed and personal property, wherever situated, whether within or without the State of Delaware.

(f) To purchase or otherwise acquire, hold, use, sell, or in any manner dispose of and to grant licenses or other rights therein and in any manner deal with patents, inventions, improvements, processes, trade-marks, trade names, rights and licenses secured under letters patent, copyrights, or otherwise.

(g) To enter into, make and perform contracts of every kind for any lawful purpose, without limit as to amount, with any person, firm, association, or corporation, town, city, county, state, territory, or government.

(h) To draw, make, accept, endorse, discount, execute, and issue promissory notes, drafts, bills of exchange, warrants, debentures, and other negotiable or transferable instruments.

(i) To issue bonds, debentures, or obligations and to secure the same by mortgage, pledge, deed of trust, or otherwise.

(j) To purchase, hold, and reissue the shares of its capital stock, bonds, and other obligations of this Corporation from time to time to such extent and in such manner and upon such terms as its Board of Directors shall determine, provided that this corporation shall not use any of its funds or property for the purchase of its own shares of stock when such use would cause any impairment of the capital of this Corporation except as otherwise permitted by law and provided, further, that shares of its own capi-

tal stock belonging to this Corporation shall not be voted upon directly or indirectly.

60 (k) To carry on any or all of its operations and business and to promote its objects within the State of Delaware or elsewhere, without restriction as to place or amount.

(l) To carry on any other business in connection therewith.

(m) To do any or all of the things set forth to the same extent as natural persons might or could do and in any part of the world as principals, agents, contractors, trustees, or otherwise, alone or in company with others.

The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the Corporation, and are in furtherance of, and in addition to, and not in limitation of the general powers conferred by the laws of the State of Delaware.

It is the intention that the purposes, objects and powers specified in this Article Third and all subdivisions thereof shall, except as otherwise expressly provided, in nowise be limited or restricted by reference to or inference from the terms of any other clause or paragraph of this Article, and that each of the purposes, objects and powers specified in this Article Third shall be regarded as independent purposes, objects and powers.

Fourth. The total number of shares of stock which the Corporation shall have authority to issue is 2,065,000 shares of which 65,000 shares of the par value of \$100 each are Preferred Stock and 2,000,000 shares of the par value of \$1 each are Common Stock.

The designations and the powers, preferences, and rights, and the qualifications, limitations, or restrictions thereof which are permitted by the provisions of Section 13 of the General Corporation Law of the State of Delaware in respect of the various classes of stock of the Corporation and the fixing of which by this Agreement of Merger is desired and, as to those which are not fixed by this Agreement of Merger, a statement of an express grant of authority to the Board of Directors to fix by resolution or resolutions such thereof as may be desired but are not fixed by this Agreement of Merger, are as follows:

A. Issuance and Series of Preferred Stock.—Forty-seven thousand five hundred (47,500) shares of the Preferred Stock herein authorized shall be designated "\$4 Cumulative Preferred Stock, Series A" and the \$4 Cumulative Preferred Stock, Series A shall have the powers, preferences, and rights, and the qualifications, limitations, or restrictions thereof, fixed by this Agreement of Merger.

The remaining shares of Preferred Stock hereby authorized, other than the \$4 Cumulative Preferred Stock, Series A, may be issued in one or more series (provided that all shares of any one series shall be alike in every particular) and the shares of each series shall have such voting powers, designations, preferences, and relative, participating, optional, or other special rights, and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue of such stock adopted by the Board of Directors pursuant to the authority to do so which is hereby expressly vested in them; provided, that no such resolution or resolutions shall alter or abridge the voting powers hereby conferred upon the holders of Preferred Stock of any series, and provided further that, so long as any shares of \$4 Cumulative Preferred Stock, Series A are outstanding, the Corporation shall not issue any shares of Preferred Stock entitling the holders thereof to receive annual dividends of more than \$4 a share without first obtaining the affirmative vote of the holders of at least a majority of the \$4 Cumulative Preferred Stock, Series A at the time outstanding, voting as a class, given in person or by proxy, either in writing or at a meeting called for that purpose.

Any of the remaining authorized shares of Preferred Stock in excess of the 47,500 shares of \$4 Cumulative Preferred Stock, Series A hereinabove provided for may, in lieu of being issued in series as aforesaid, be issued as additional \$4 Cumulative
61 Preferred Stock, Series A, having the same powers, preferences, and rights, and the same qualifications, limitations, or restrictions thereof, as the 47,500 shares of \$4 Cumulative Preferred Stock, Series A hereinabove provided for.

B. Dividends.—The holders of the \$4 Cumulative Preferred Stock, Series A shall be entitled to receive, when and as declared by the Board of Directors out of any assets or funds of the Corporation legally available therefor, cumulative cash dividends at the fixed rate of \$4 per share per year, and no more, payable quarterly on the first days of January, April, July, and October in each year.

Dividends on the shares of \$4 Cumulative Preferred Stock, Series A herein authorized shall be paid before any dividend shall be paid or other distributions made to the holders of Common Stock, and said dividends shall be cumulative from July 1, 1946.

When full cumulative dividends for all past dividend periods and for the then current quarterly dividend period shall have been paid upon, or declared and set apart for, all shares of the \$4 Cumulative Preferred Stock, Series A then issued and outstanding, and when the dividend requirements of any other outstanding series of Preferred Stock shall have been satisfied, the Board of Direc-

tors may declare and the Corporation may pay, out of assets or funds of the Corporation legally available therefor, dividends upon the outstanding Common Stock.

C. Liquidation.—In the event of any liquidation, dissolution or winding up of the Corporation, the holders of \$4 Cumulative Preferred Stock, Series A shall be entitled to receive, ratably and equally, out of the assets of the Corporation available therefor, the sum of \$100 per share plus an amount equal to the dividends accumulated, accrued, and unpaid thereon (whether or not such dividends have been earned) before any payment shall be made or any assets distributed to the holders of the Common Stock.

After the satisfaction of the rights of the holders of the \$4 Cumulative Preferred Stock, Series A and the holders of any other series of Preferred Stock, the assets of the Corporation available therefor shall be distributed ratably and equally among the holders of the Common Stock.

D. Voting Rights.—Until default by the Corporation in the payment of four quarterly dividend payments on the outstanding Preferred Stock or any series thereof, the holders of the Common Stock shall have exclusive voting power for all purposes of the Corporation, except as otherwise required by law.

In the event of default by the Corporation in the payment of four quarterly dividend payments on the outstanding Preferred Stock or any series thereof, then, until all arrears in dividends on the Preferred Stock shall have been paid and the full dividend for the then current dividend period shall have been declared and paid or set apart for payment, the holders of the Preferred Stock voting separately as a class, with one vote for each share, shall have the right to elect one less than a majority of the board of directors.

In the event of default by the Corporation in the payment of eight quarterly dividend payments on the outstanding Preferred Stock or any series thereof, then, until the arrears in dividends shall have been reduced to the point at which only four quarterly dividend payments on the outstanding Preferred Stock or any series thereof remain in arrears, the holders of the Preferred Stock voting separately as a class, with one vote for each share, shall have the right to elect a majority of the board of directors. When the dividends in arrears have been reduced until only four quarterly dividend payments on the outstanding Preferred Stock or any series thereof remain in arrears, the holders of the Preferred Stock shall again have the right to elect only one less than a majority of the board of directors. When all the dividends in arrears have been paid and the full dividend on the Preferred Stock for the then current dividend period shall have been declared and paid or set apart for payment, the holders of the Com-

mon Stock shall again have exclusive voting power for all purposes of the Corporation, except as otherwise required by law. Vacancies, however occasioned, among the Directors elected exclusively by the holders of the Preferred Stock or exclusively by the holders of the Common Stock shall, if not filled by the stockholders, be filled by the remainder of the Directors elected by the particular class of stock whose representation was so reduced.

Upon the happening of any event which changes the right of either class of stockholders to vote for directors, a meeting of the holders of all stock entitled immediately after the happening of such event to vote for the election of any director shall be held, upon notice similar to that provided by the bylaws for an annual meeting, upon call by the holders of not less than 1,000 shares of any class of stock then entitled to vote for the election of any director or upon call by the Secretary of the Corporation, at the request in writing of the holders of not less than 1,000 shares of any class of stock then entitled to vote for the election of any director, and at such meeting a new Board of Directors shall be elected to act until the next annual meeting of stockholders.

E. Redemption.—The shares of the \$4 Cumulative Preferred Stock; Series A shall be subject to redemption, in whole or in part, at any time or from time to time, at the option of the Corporation, upon the payment in cash of \$103 per share and an amount equal to the dividends accumulated, accrued and unpaid thereon (whether or not such dividends have been earned). If less than all the outstanding shares of \$4 Cumulative Preferred Stock, Series A are to be redeemed, the shares to be redeemed shall be determined by lot or pro rata or in any other manner determined by the Board of Directors. Written notice of the election of the Corporation to redeem shares of \$4 Cumulative Preferred Stock, Series A shall be mailed to the holders of record of the shares to be redeemed at least thirty days prior to the redemption date. From and after the date fixed in such notice as the redemption date (unless the Corporation shall default in the payment of the redemption price), all dividends on the shares so called for redemption shall cease to accrue and all the rights of the holders thereof as stockholders of the Corporation, except the right to receive the redemption price, shall cease and determine and such shares shall not thereafter be transferred (except with the consent of the Corporation) on the books of the Corporation, and such shares shall not be deemed to be outstanding for any purpose whatever. However, at any time after the mailing of any notice of redemption, the Corporation may deposit the redemption price of the shares to be redeemed with a bank or trust company in the

Borough of Manhattan, The City of New York, or with a bank or trust company, in Chicago, Illinois, as a trust fund for the benefit of the respective holders of the shares designated for redemption and not yet redeemed, and from and after the making of such deposit the shares of Preferred Stock designated for redemption shall not be deemed outstanding for any purpose whatever and the rights of the holders of such shares shall be limited solely to the right to receive the redemption price of such shares on or after the redemption date fixed by the notice, upon the surrender of the certificate or certificates representing such shares to the Corporation at the principal office of the bank or trust company with which such trust fund has been deposited.

Fifth. No holder of stock of any class shall have any right as such holder to purchase or subscribe for any stock of any class or any obligations convertible into any stock of any class which the Corporation may at any time issue or sell, and all such stock or obligations may be issued and disposed of by the Board of Directors to such persons, firms, corporations and associations and for such lawful considerations and on such terms as the Board of Directors in its discretion may determine, without first offering the same or any part thereof to the stockholders or any class of stockholders.

Sixth. The Corporation is to have perpetual existence.

63 Seventh. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Eighth. The number of directors of the Corporation shall be fixed by, or in the manner provided in, the bylaws of the Corporation, and may be altered from time to time only as may be provided in the bylaws. Any director may be removed by a majority vote of the stockholders at any meeting of stockholders for any cause deemed sufficient by such meeting. Directors of the Corporation need not be stockholders therein.

Ninth. In furtherance but not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized:

(a) To fix the amount to be reserved as working capital and, subject to the limitations herein contained, to authorize and cause to be executed mortgages and liens upon the property and franchises of the Corporation;

(b) To make, amend, alter, change, add to, or repeal the bylaws of the Corporation in any manner not in conflict with this Agreement of Merger, and without any action on the part of the stockholders. The bylaws made by the directors may be amended,

altered, changed, added to, or repealed by the stockholders in any manner not in conflict with this Agreement of Merger;

(c) By resolution passed by a majority of the whole Board, to designate three or more directors to constitute an Executive Committee, which committee shall have and exercise (except when the Board of Directors shall be in session) such powers and rights of the Board of Directors in the management of the business and affairs of the Corporation as may be provided in the by-laws or in said resolution, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it;

(d) To sell, assign, convey, or otherwise dispose of a part of the property, assets, and effects of the Corporation less than the whole or less than substantially the whole thereof, on such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as they shall deem advisable, without the assent of the stockholders in writing or otherwise, and also to sell, assign, transfer, convey, and otherwise dispose of the whole or substantially the whole of the property, assets, effects, franchises, and good will of the Corporation, on such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as they shall deem advisable, but only with the written consent or pursuant to the affirmative vote of the holders of at least a majority in amount of the stock then having voting power at the time issued and outstanding, but in any event not less than the amount required by law.

All of the power of the Corporation, insofar as the same lawfully may be vested by this Agreement of Merger in the Board of Directors, and except as otherwise provided herein, are hereby conferred upon the Board of Directors of the Corporation.

Tenth. Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 3883 of the Revised Code of 1915 of said State, or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 43 of the General Corporation Law of the State of Delaware, order a meeting of the creditors or class

of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in
64 such manner as the said Court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the Court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

Eleventh. Both stockholders and directors shall have power, if the bylaws so provide, to hold their meetings, and to have one or more offices within or without the State of Delaware, and to keep the books of the Corporation (subject to the provisions of applicable statutes) outside of the State of Delaware at such places as may be from time to time designated by the Board of Directors.

Twelfth. No contract or other transaction between the Corporation and any other firm or corporation shall be affected or invalidated by reason of the fact that any one or more of the directors or officers of the Corporation is or are interested in, or is a member, stockholder, director, or officer or are members, stockholders, directors, or officers of such other firm or corporation; and any director or office or officers, individually or jointly, may be a party or parties to, or may be interested in, any contract or transaction of the Corporation or in which the Corporation is interested, and no contract, act or transaction of the Corporation with any person or persons, firm, association, or corporation, shall be affected or invalidated by reason of the fact that any director or directors or officer or officers of the Corporation, is a party or are parties to, or interested in, such contract, act or transaction, or in any way connected with such person or persons, firm, association, or corporation, and each and every person who may become a director or officer of the Corporation is hereby relieved from any liability that might otherwise exist from this contracting with the Corporation for the benefit of himself or any firm, association, or corporation in which he may be in anywise interested.

Thirteenth: The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this Agreement of Merger, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

3. The manner of converting the outstanding shares of the capital stock of each of the constituent corporations into shares of the Corporation shall be as follows:

Forthwith upon the filing and recording of this Agreement of Merger as required by law:

(a) Each share of \$5 Cumulative Preferred Stock, Series A and each share of \$5 Cumulative Preferred Stock, Series B of American City Lines, Inc. (except any such shares held by National City Lines, Inc., American City Lines, Inc., or Andover Finance Company) shall be converted into one share of \$4 Cumulative Preferred Stock, Series A of the Corporation, and each holder of shares of \$5 Cumulative Preferred Stock, Series A or \$5 Cumulative Preferred Stock, Series B of American City Lines, Inc., upon the surrender to the Corporation of one or more certificates for such shares for cancellation, shall be entitled to receive one or more certificates for a number of shares of \$4 Cumulative Preferred Stock, Series A of the Corporation equal to the number of shares represented by the certificates so surrendered for cancellation by such holder; and dividends upon shares of \$4 Cumulative Preferred Stock, Series A of the Corporation so issued shall accrue from July 1, 1946, the dividend payable July 1, 1946, on the \$5 Cumulative Preferred Stock, Series A and \$5 Cumulative Preferred Stock, Series B of American City Lines, Inc., having already been declared.

(b) Each share of Common Stock of said American City Lines, Inc. (except any such shares held by National City Lines, Inc., American City Lines, Inc., or Andover Finance Company) shall be converted into .8684256 shares of the Common Stock of the Corporation, and each holder of shares of the Common Stock of American City Lines, Inc., upon the surrender to the Corporation of one or more certificates for such shares for cancellation, shall be entitled to receive one or more certificates for a number of shares of Common Stock of the Corporation equal to the number of shares represented by the certificates so surrendered for cancellation by such holder multiplied by .8684256. On such conversion and surrender, no certificates for fractions of a share of Common Stock of the Corporation shall be issued but a cash payment of the value of any fraction of a share issuable shall be made and for this purpose the value of such fraction shall be computed on the basis of the last reported sale price of Common Stock of National City Lines, Inc. on the New York Curb Exchange on the date of filing of this Agreement of Merger in the office of the Secretary of State or, if no sale shall take place on that day, on the next preceding day on which a sale shall have taken place.

(c) Each share of Common Stock of said Andover Finance Company (except any such shares held by National City Lines, Inc., American City Lines, Inc., or Andover Finance Company) shall be converted into one share of the Common Stock of the Corporation and each holder of shares of the Common Stock of Andover Finance Company, upon the surrender to the Corporation of one or more certificates for such shares for cancellation, shall be entitled to receive one or more certificates for a number of shares of Common Stock of the Corporation equal to the number of shares represented by the certificates so surrendered for cancellation by such holder. On such conversion and surrender no certificates for fractions of a share of Common Stock of the Corporation shall be issued, but a cash payment of the value of any fraction of a share issuable shall be made and for this purpose the value of such fraction shall be computed on the basis of the last reported sale price of Common Stock of National City Lines, Inc., on the New York Curb Exchange on the date of filing this Agreement of Merger in the Office of the Secretary of State, or if no sale shall take place on that day, on the next preceding day on which a sale shall have taken place. The 3,442 shares of Preferred Stock of Andover Finance Company, which are held by other parties hereto, shall be canceled.

(d) Each share of the existing Common Stock of the Corporation shall be converted into two shares of its new Common Stock having a par value of \$1 per share, and each holder of shares of existing Common Stock of the Corporation, upon the surrender to the Corporation of one or more certificates for such shares for cancellation, shall be entitled to receive one or more certificates for twice the number of shares of new Common Stock of the Corporation represented by the certificates so surrendered for cancellation by such holder.

(e) If at the time this Agreement of Merger shall become effective any of the parties hereto shall own any of the outstanding shares of capital stock of any other party hereto, such shares shall not be converted or transferred, nor shall the beneficial interest therein pass to National City Lines, Inc., but such shares of stock shall forthwith be surrendered for cancellation and any shares of stock of the Corporation issuable in exchange therefor in accordance with this agreement shall have the status of authorized but unissued stock of the Corporation.

4. The following are terms and conditions of this merger:

Until altered, amended, or repealed as therein provided, the bylaws of National City Lines, Inc., as in effect at the date when

this agreement becomes effective, shall be the bylaws of the Corporation.

The first Board of Directors of the Corporation after the date when the merger provided for herein shall become effective shall be the Directors of National City Lines, Inc. in office at the date when this agreement becomes effective.

The first annual meeting of the stockholders of the Corporation held after the date when this agreement becomes effective shall be the annual meeting provided for by the bylaws for the year 1947.

66. The officers of the Corporation, who shall hold the offices set opposite their names from and after the date when this agreement shall become effective and until the first meeting of the Board of Directors to be held after the next annual meeting of stockholders, are as follows:

—President, E. Roy Fitzgerald, 20 N. Wacker Drive, Chicago, Illinois.

Vice President, Foster G. Beamsley, 20 N. Wacker Drive, Chicago, Illinois.

Vice President and Treasurer, Ed. Fitzgerald, 20 N. Wacker Drive, Chicago, Illinois.

Vice President and General Manager, W. R. Fitzgerald, 20 N. Wacker Drive, Chicago, Illinois.

Vice President and Controller, E. V. Anderson, 20 N. Wacker Drive, Chicago, Illinois.

Vice President, V. B. Churm, 20 N. Wacker Drive, Chicago, Illinois.

Secretary and Assistant Treasurer, J. M. Schramm, 20 N. Wacker Drive, Chicago, Illinois.

General Attorney, Robert H. Farrell, 20 N. Wacker Drive, Chicago, Illinois.

Assistant Secretary, G. L. Walker, 20 N. Wacker Drive, Chicago, Illinois.

The Corporation shall pay all expenses of carrying this Agreement of Merger into effect and of accomplishing the merger.

Upon the date when this agreement shall become effective, the separate existences of American City Lines, Inc., and of Andover Finance Company shall cease and the constituent corporations shall be merged into National City Lines, Inc., the surviving corporation, in accordance with the provisions of this agreement. National City Lines, Inc. shall possess all the rights, privileges, powers, and franchises, as well of a public as of a private nature,

and be subject to all the restrictions, disabilities, and duties of each of the corporations, parties to this agreement, and all and singular the rights, privileges, powers, and franchises of each of said corporations and all property, real, personal, and mixed, and all debts due to each of such corporations shall be vested in the surviving corporation; and all property, rights and privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the surviving corporation as they were of the respective constituent corporations, and the title to any real estate, whether by deed or otherwise, vested in either of said corporations, parties hereto, shall not revert or be in any way impaired by reason of this merger, provided that all rights of creditors and all liens upon the property of either of said corporations, parties hereto, shall be preserved unimpaired, and all debts, liabilities, and duties of American City Lines, Inc., and of Andover Finance Company shall thenceforth attach to the said surviving corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

If at any time the Corporation shall consider or be advised that any further assignments or assurances in law or any other things are necessary or desirable to vest in the Corporation according to the terms hereof the title to any property or rights of American City Lines, Inc., and of Andover Finance Company, the proper officers and directors of American City Lines, Inc. and of Andover Finance Company, as the case may be, shall and will execute and make all such proper assignments and assurances and do all things necessary or proper to vest title in such property or rights in the Corporation and otherwise to carry out the purposes of this Agreement of Merger.

67 5. This Agreement of Merger shall be filed in the office of the Secretary of State of Delaware and a copy thereof, duly certified by the Secretary of State, shall be recorded in the office of the Recorder of Deeds for New Castle County, and shall be effective upon the filing thereof in the office of the Secretary of State of Delaware.

In witness whereof, the parties to this agreement, pursuant to authority duly given by their respective Boards of Directors, have caused these presents to be executed by National City Lines, Inc., American City Lines, Inc., and Andover Finance Company and their respective corporate seals to be hereto affixed, and to be

executed by a majority of the Directors of each of the parties hereto.

NATIONAL CITY LINES, INC.,
By E. ROY FITZGERALD,
President.

E. ROY FITZGERALD,
F. G. BEAMSLEY,
ED. FITZGERALD,
FRANK A. WILLARD,
C. FRANK REAVIS,
ROBERT H. FARRELL,
*Constituting a majority of the Board of
Directors of National City Lines, Inc.*

Attest:
[SEAL]

J. M. SCHRAMM, *Secretary.*
AMERICAN CITY LINES, INC.,
By E. ROY FITZGERALD,
Chairman of the Board.

E. ROY FITZGERALD,
JOHN L. WILSON,
F. G. BEAMSLEY,
ED. FITZGERALD,
FRANK A. WILLARD,
ROBERT H. FARRELL,
*Constituting a majority of the Board of
Directors of American City Lines, Inc.*

Attest:
[SEAL]

J. M. SCHRAMM, *Secretary.*

ANDOVER FINANCE COMPANY,
By E. ROY FITZGERALD,
President.

E. ROY FITZGERALD,
F. G. BEAMSLEY,
ED. FITZGERALD,
J. M. SCHRAMM,
G. L. WALKER,
*Constituting a majority of the Board of
Directors of Andover Finance Company.*

Attest:
[SEAL]

J. M. SCHRAMM, *Secretary.*

I, J. M. Schramm, Secretary of National City Lines, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certify as such Secretary and under the seal of said corporation that the Agreement of Merger to which this

certificate is attached, after having been first duly signed on behalf of said corporation and by a majority of the directors thereof and having been signed by American City Lines, Inc., and Andover Finance Company, both corporations of the State of Delaware, and by a majority of the directors of American City Lines, Inc., and Andover Finance Company, was duly submitted to the stockholders of said National City Lines, Inc. at a special meeting of said stockholders, called and held separately from the meeting of stockholders of any other corporation, after at least twenty days' notice by mail and notice by publication as provided by Section 59 of the General Corporation Law of the State of Delaware, on the 11th day of July 1946, for the purpose of considering and taking action upon the proposed Agreement of Merger; that 600,000 shares of stock of said corporation, all Common Stock, were on said date issued and outstanding; that the holders of 468,043 shares voted by ballot in favor of the approval and the holders of 280 shares voted by ballot against the approval of the proposed Agreement of Merger, the said affirmative vote representing at least two-thirds of the total number of shares of the outstanding capital stock of said corporation, and that thereby the Agreement of Merger was at said meeting duly adopted as the act of the stockholders of said National City Lines, Inc. and the duly adopted agreement of said corporation.

Witness my hand and the seal of said National City Lines, Inc. on this 11th day of July 1946.

[SEAL]

J. M. SCHRAMM.

69 I, J. M. Schramm, Secretary of American City Lines, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certify as such Secretary and under the seal of said corporation that the Agreement of Merger to which this certificate is attached, after having been first duly signed on behalf of said corporation and by a majority of the directors thereof and having been signed by National City Lines, Inc., and Andover Finance Company, both corporations of the State of Delaware, and by a majority of the directors of National City Lines, Inc., and Andover Finance Company, was duly submitted to the stockholders of said American City Lines, Inc., at a special meeting of said stockholders, called and held separately from the meeting of stockholders of any other corporation, after at least twenty days' notice by mail and notice by publication as provided by Section 59 of the General Corporation Law of the State of Delaware on the 11th day of July 1946, for the purpose of considering and taking action upon the proposed Agreement of Merger; that 9,375 shares of the \$5 Cumulative Preferred

Stock, Series A, 38,125 shares of \$5 Cumulative Preferred Stock, Series B and 253,333 shares of Common Stock of said corporation were on said date issued and outstanding; that the holders of 9,375 shares of \$5 Cumulative Preferred Stock, Series A, 38,125 shares of \$5 Cumulative Preferred Stock, Series B and 253,333 shares of Common Stock voted by ballot in favor of the approval and the holders of no shares of \$5 Cumulative Preferred Stock, Series A, no shares of \$5 Cumulative Preferred Stock, Series B, and no shares of Common Stock voted by ballot against the approval of the proposed Agreement of Merger, the said affirmative vote representing at least two-thirds of the total number of shares of the outstanding capital stock of said corporation, and that thereby the Agreement of Merger was at said meeting duly adopted as the act of the stockholders of said American City Lines, Inc., and the duly adopted agreement of said corporation.

Witness my hand and the seal of said American City Lines, Inc., on this 11th day of July 1946.

[SEAL]

J. M. SCHRAMM.

I, J. M. Schramm, Secretary of Andover Finance Company, a corporation organized and existing under the laws of the State of Delaware, hereby certify as such Secretary and under the seal of said corporation that the Agreement of Merger to which this certificate is attached, after having been first duly signed on behalf of said corporation and by a majority of the directors thereof and having been signed by National City Lines, Inc. and American City Lines, Inc., both corporations of the State of Delaware, and by a majority of the directors of National City Lines, Inc. and American City Lines, Inc., was duly submitted to the stockholders of said Andover Finance Company at a special meeting of said stockholders, called and held separately from the meeting of stockholders of any other corporation, after at least twenty days' notice by mail and notice by publication as provided by Section 59 of the General Corporation Law of the State of Delaware on the 11th day of July 1946 for the purpose of considering and taking action upon the proposed Agreement of Merger; that 3,442 shares of Preferred Stock and 40,587½ shares of Common Stock of said corporation were on said date issued and outstanding; that the holders of 3,442 shares of Preferred Stock, and 40,237 shares of Common Stock voted by ballot in favor of the approval and the holders of no shares of Preferred Stock and no shares of Common Stock voted by ballot against the approval of the proposed Agreement of Merger, the said affirmative vote representing at least two-thirds of the total number of shares of the outstanding capital stock of

said corporation, and that thereby the Agreement of Merger was at said meeting duly adopted as the act of the stockholders of said Andover Finance Company and the duly adopted agreement of said corporation.

Witness my hand and the seal of said Andover Finance Company on this 11th day of July 1946.

[SEAL]

J. M. SCHRAMM.

70 The foregoing Agreement of Merger having been executed by the parties thereto and by a majority of the Board of Directors of each corporation a party thereto, and having been adopted separately by the stockholders of each corporation a party thereto, in accordance with the provisions of the General Corporation Law of the State of Delaware, and that fact having been certified on said Agreement of Merger by the Secretary or Assistant Secretary of each corporation a party thereto, the President or Vice President and the Secretary or an Assistant Secretary of each corporation a party thereto do now hereby execute the said Agreement of Merger, under the corporate seals of their respective corporations, by authority of the directors and stockholders thereof, as the respective act, deed and agreement of each of said corporation, on this 11th day of July 1946.

NATIONAL CITY LINES, INC.,
By E. ROY FITZGERALD,

President.

J. M. SCHRAMM,

Secretary.

Attest:

[SEAL]

GREYDON L. WALKER, *Assistant Secretary.*

AMERICAN CITY LINES, INC.,
By JOHN L. WILSON,

President.

J. M. SCHRAMM,

Secretary.

Attest:

[SEAL]

GREYDON L. WALKER, *Assistant Secretary.*

ANDOVER FINANCE COMPANY,
By E. ROY FITZGERALD,

President.

J. M. SCHRAMM,

Secretary.

Attest:

[SEAL]

GREYDON L. WALKER, *Assistant Secretary.*

71 STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered that on this 11th day of July A. D. 1946, personally came before me Mary E. Joyce, a notary public in and for the County and State aforesaid. E. Roy Fitzgerald, President of National City Lines, Inc., a corporation of the State of Delaware and one of the corporations described in and which executed the foregoing Agreement of Merger, known to me personally to be such and he, the said E. Roy Fitzgerald, as such President, duly executed said Agreement of Merger before me and acknowledged said Agreement of Merger to be the act, deed and agreement of said National City Lines, Inc.; that the signatures of said President and said J. M. Schramm, Secretary of said corporation, to said foregoing Agreement of Merger are in the handwriting of said President and Secretary of said National City Lines, Inc., and that the seal affixed to said Agreement of Merger is the common corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

MARY E. JOYCE, *Notary Public.*

Mary E. Joyce, Notary Public, Cook County, Illinois.

72 STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered that on this 11th day of July A. D. 1946, personally came before me Mary E. Joyce, a notary public in and for the County and State aforesaid, John L. Wilson, President of American City Lines, Inc., a corporation of the State of Delaware and one of the corporations described in and which executed the foregoing Agreement of Merger, known to me personally to be such and he, the said John L. Wilson, as such President, duly executed said Agreement of Merger before me and acknowledged said Agreement of Merger to be the act, deed and agreement of said American City Lines, Inc.; that the signatures of said President and said J. M. Schramm, Secretary of said corporation, to said foregoing Agreement of Merger are in the handwriting of said President and Secretary of said American City Lines, Inc., and that the seal affixed to said Agreement of Merger is the common corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

MARY E. JOYCE, *Notary Public.*

Mary E. Joyce, Notary Public, Cook County, Illinois.

STATE OF ILLINOIS, . . .

County of Cook, ss:

Be it remembered that on this 11th day of July A. D. 1946, personally came before me Mary E. Joyce, a notary public in and for the County and State aforesaid, E. Roy Fitzgerald, President of Andover Finance Company, a corporation of the State of Delaware and one of the corporations described in and which executed the foregoing Agreement of Merger, known to me personally to be such and he, the said E. Roy Fitzgerald, as such President, duly executed said Agreement of Merger before me and acknowledged said Agreement of Merger to be the act, deed and agreement of said Andover Finance Company; that the signatures of said President and said J. M. Schramm, Secretary of said corporation, to said foregoing Agreement of Merger are in the handwriting of said President and Secretary of said Andover Finance Company, and that the seal affixed to said Agreement of Merger is the common corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

MARY E. JOYCE, *Notary Public.*

Mary E. Joyce, Notary Public, Cook County, Illinois.

73 STATE OF DELAWARE.

New Castle County, ss:

I, Burton S. Heal, Recorder of Deeds for New Castle County, Delaware, do hereby certify that Certified Copy of Certificate of Agreement of Merger between the "National City Lines, Inc.," "American City Lines, Inc.," and "Andover Finance Company," under the name of "National City Lines, Inc.," as received and filed in the office of the Secretary of State the fifteenth day of July A. D. 1946, was received for record in this office on July 15, 1946, and the same appears of record in the Recorder's Office for said County in Incorporation Record H, Volume 52, Page 416, &c.

Witness my hand and Official Seal, this Twenty-third day of April A. D. 1947.

[SEAL]

BURTON S. HEAL, *Recorder.*

74 THE STATE OF DELAWARE,

Kent County, ss:

I, Frank P. Walker, Recorder of Deeds for Kent County, Delaware, do hereby certify that National City Lines, Inc., Agreement of Merger Between National City Lines, Inc., American City Lines, Inc., and Andover Finance Company, was received for record in this office on July 15 A. D. 1946, and the same appears

of record in the Recorder's Office for said County in Corporation Record P, Volume 19, Page 54, &c.

Witness my hand and Official Seal, this 23d day of April A. D. 1947.

[SEAL]

FRANK P. WALKER, *Recorder.*

STATE OF DELAWARE

OFFICE OF SECRETARY OF STATE

I, William J. Storey, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of, Certificate of Agreement of Merger between the "National City Lines, Inc.," "American City Lines, Inc.," and "Andover Finance Company," under the name of "National City Lines, Inc.," as received and filed in this office the fifteenth day of July A. D. 1946, at 10:30 o'clock A. M.

In testimony whereof, I have hereunto set my hand and official seal, at Dover, this seventh day of August in the year of our Lord one thousand nine hundred and forty-six.

[SEAL]

WILLIAM J. STOREY,
Secretary of State.

Exhibit B to Affidavit

CERTIFICATE OF INCORPORATION OF AMERICAN CITY LINES, INC.

First. The name of the corporation is American City Lines, Inc.

Second. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent, is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington, Delaware.

Third. The nature of the business, or objects or purposes to be transacted, promoted, or carried on are:

To subscribe for, or cause to be subscribed for, buy, own, hold, purchase, receive, or acquire, and to sell, negotiate, guarantee, assign, deal in, exchange, transfer, mortgage, pledge, or otherwise dispose of, shares of the capital stock, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, acceptances, drafts, and evidences of indebtedness issued or created by any government or by any political subdivision thereof, or by any other corporations, joint stock companies, or associations, whether public, private, or municipal, or any corporate body, and while the owner thereof to possess and to exercise in respect thereof all the rights, powers, and privileges of ownership, including the right to vote thereon; to guarantee the payment of dividends on any

shares of the capital stock of any of the corporations, joint stock companies, or associations in which this Corporation has or may at any time have an interest, and to become surety in respect of, endorse, or otherwise guarantee the payment of the principal of or interest on any scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness issued or created by any such corporations, joint stock companies, or associations; to become surety for or guarantee the carrying out and performance of any and all contracts, leases, and obligations of every kind of any corporations, joint stock companies, or associations, and in particular of any corporation, joint stock company, or association any of whose shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness, are at any time held by or for this Corporation, and to do any acts or things designed to protect, preserve, improve, or enhance the value of any such shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness.

To purchase or otherwise acquire, own, and dispose of any part or all of the capital stock and other securities of any corporation engaged in the transportation of passengers by omnibuses, streetcars, trackless trolleys, or other vehicles, whether propelled by gas, electricity, or other motive power, on and over streets, roads, and highways within and without cities, villages, and other municipal corporations, and over private rights of way, and to make payment therefor by the issuance of its capital stock of any class, bonds, debentures, and notes, and other obligations or in any other manner permitted by law and in connection therewith to assume any or all of the bonds, mortgages, leases, contracts, indebtedness, liabilities, and obligations of any such corporation.

To organize, incorporate, reorganize, merge, consolidate, and finance any corporation engaged or formed for the purpose of engaging in transportation business as defined in paragraph (b) hereof and to underwrite, subscribe for, and endorse the bonds, stocks, securities, debentures, notes, or undertakings of any such corporations and to make any guaranty in connection therewith or otherwise for the payment of money or for the performance of any obligation or undertaking and to do any and all things necessary or convenient to carry any of such purposes into effect.

To render managerial, supervisory, accounting, and other services to corporations engaged in transportation business as defined in paragraph (b) hereof, provided that nothing contained in this paragraph or any other paragraph in this Article Third shall be

construed to authorize or empower this corporation to transport or undertake or engage in the business of transporting passengers or property for the general public, either for compensation or otherwise.

To acquire by purchase, lease, or otherwise, take, own, hold, sell, exchange, transfer, lease, repair, maintain, improve, mortgage, and in any other manner deal in and deal with real property, mixed and personal property, wherever situated, whether within or without the State of Delaware.

To purchase or otherwise acquire, hold, use, sell, or in any manner dispose of and to grant licenses or other rights therein and in any manner deal with patents, inventions, improvements, processes, trade-marks, trade names, rights, and licenses secured under letters patent, copyrights, or otherwise.

79 To enter into, make, and perform contracts of every kind for any lawful purpose, without limit as to amount, with any person, firm, association, or corporation, town, city, county, state, territory, or government.

To draw, make, accept, endorse, discount, execute, and issue promissory notes, drafts, bills of exchange, warrants, debentures, and other negotiable or transferable instruments.

To issue bonds, debentures, or obligations and to secure the same by mortgage, pledge, deed of trust, or otherwise.

To purchase, hold, and reissue the shares of its capital stock, bonds, and other obligations of this Corporation from time to time to such extent and in such manner and upon such terms as its Board of Directors shall determine, provided that this corporation shall not use any of its funds or property for the purchase of its own shares of stock when such use would cause any impairment of the capital of this Corporation except as otherwise permitted by law and provided, further, that shares of its own capital stock belonging to this Corporation shall not be voted upon directly or indirectly.

To carry on any or all of its operations and business and to promote its objects within the State of Delaware or elsewhere, without restriction as to place or amount.

To carry on any other business in connection therewith.

To do any or all of the things set forth to the same extent as natural persons might or could do and in any part of the world as principals, agents, contractors, trustees, or otherwise, alone or in company with others.

80 The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the Corporation, and are in furtherance of, and in addition to, and not in limita-

tion of the general powers conferred by the laws of the State of Delaware.

It is the intention that the purposes, objects, and powers specified in this Article Third and all subdivisions thereof shall, except as otherwise expressly provided, in nowise be limited or restricted by reference to or inference from the terms of any other clause or paragraph of this Article, and that each of the purposes, objects, and powers specified in this Article Third shall be regarded as independent purposes, objects, and powers.

Fourth. The total number of shares of stock which the corporation shall have authority to issue is two hundred (200); all of such shares shall be without par value.

Fifth. The minimum amount of capital with which the corporation will commence business is One Thousand Dollars (\$1,000.00).

Sixth. The names and places of residence of the incorporators are as follows:

Names and Residences

C. S. Peabbles, Wilmington, Delaware; S. M. Brown, Wilmington, Delaware; Walter Lenz, Wilmington, Delaware.

81 Seventh. The corporation is to have perpetual existence.

Eighth. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

Ninth. In furtherance, and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter, or repeal the bylaws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose or to abolish any such reserve in the manner in which it was created.

By resolution or resolutions, passed by a majority of the whole board to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in said resolution or resolutions or in the bylaws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business, and affairs of the corporation, and may have power to authorize the

82 seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the bylaws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that pur-

pose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, to sell, lease, or exchange all of the property and assets of the corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

The corporation may in its bylaws confer powers upon its board of directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon it by statute.

Tenth. Meetings of stockholders may be held without the State of Delaware, if the bylaws so provide. The books of the corporation may be kept (subject to any provision contained in the statutes outside of the State of Delaware at such place or places as may be from time to time designated by the board of directors.

Eleventh. The corporation reserves the right to amend, alter, change, or repeal any provision contained in this certificate of incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

83 We, the undersigned, being each of the incorporators hereinbefore named for the purpose of forming a corporation in pursuance of the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this 11th day of June A. D. 1946.

C. S. PEABBLES. [SEAL]

S. M. BROWN. [SEAL]

WALTER LENZ. [SEAL]

84 STATE OF DELAWARE,

County of New Castle, ss:

Be it remembered, That on this 11th day of June A. D. 1946, personally came before me, M. Ruth Mannering, a Notary Public for the State of Delaware, C. S. Peabbles, S. M. Brown, and Walter Lenz, all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

M. RUTH MANNERING,
Notary Public.

M. Ruth Mannering, Notary Public. Appointed Feb. 9, 1945.
State of Delaware. Term Two Years.

85

STATE OF DELAWARE

OFFICE OF SECRETARY OF STATE

I, William J. Storey, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "American City Lines, Inc.," as received and filed in this office the fifteenth day of July A. D. 1946, at 10:30 o'clock A. M.

In testimony whereof, I have hereunto set my hand and official seal at Dover, this twentieth day of June in the year of our Lord one thousand nine hundred and forty-seven.

[SEAL]

WILLIAM J. STOREY,
Secretary of State.

86 CERTIFIED COPY, CERTIFICATE OF INCORPORATION OF
AMERICAN CITY LINES, INC.

87 In the District Court of the United States In and for the
Southern District of California, Central Division.

O'MELVENY & MYERS
Title Insurance Building

438 SOUTH SPRING STREET, LOS ANGELES 13, CAL.

Received copy of the within Affidavit this 11 day of Aug. 1947.

HAIGHT, TRIPPET & SYVERTSON,
Attorney for Defendant.

Received copy of the within Affidavit this 11th day of August,
1947.

W. E. DIXON,
Attorney for U. S.

Received copy of the within Affidavits this 11th day of August,
1947.

COSGROVE, CLAYTON, CRAMER & DIETHER,
Attorneys for Deft. Gen. Motors.

Received copy of the within Affidavits this 11th day of August,
1947.

FINLAYSON, BENNETT & MORROW.

Received copy of the within Affidavits this 11th day of August,
1947.

WRIGHT & MILLIKAN,
J. M. JENSEN,
Attorneys for Deft. Mack Manufacturing Corporation.

Received copy of the within Affidavit this 11th day of August, 1947.

LAWLER, FELIX & HALL,
By HARRIET S. ELDER.

88 In the District Court of the United States for the Southern
District of California, Central Division

[The endorsement omitted.]

Civil No. 6747-Y

[Title omitted.]

Notice of motions to dismiss, for more definite statement or for bill of particulars, and to quash, together with said motions, of defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.

Filed Aug. 11, 1947

Plaintiff and its Attorneys:

89 Please take notice that, on September 15, 1947, at the hour of 10:00 o'clock A. M., or as soon thereafter as defendants' counsel may be heard, defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc. (herein referred to as "said defendants") will individually move the above entitled Court in the court room of Honorable Leon R. Yankwich, Judge of said Court, in the United States Post Office and Court House Building, at Los Angeles, California, in accordance with Motion No. 1, Motion No. 2, and Motion No. 3, annexed hereto and made a part hereof. Said motions will be made upon the grounds stated in each of said motions, respectively, and will be based upon the papers and records referred to in each of said motions, respectively.

Dated August 11, 1947.

O'MELVENY & MYERS,
PIERCE WORKS,
JACKSON W. CHANCE,
By Jackson W. Chance,
JACKSON W. CHANCE,
Attorneys for said Defendants.

90.

Motion No. 1

Said defendants move to dismiss the Complaint on file in the above entitled action on the ground that this is not a con-

venient forum to try said action and that the most convenient forum therefor is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago). This motion is based upon the Complaint on file herein, the accompanying affidavit of E. Roy Fitzgerald, and the accompanying Memorandum of Points and Authorities.

° Motion No. 2

Said defendants move for a more definite statement or for a bill of particulars of the matters in the Complaint hereinafter mentioned upon the grounds (i) that the same are not averred with sufficient definiteness or particularity to enable said defendants properly to prepare their responsive pleadings or to prepare for trial, and (ii) that said Complaint is so vague and ambiguous that said defendants cannot reasonably be required to frame a responsive pleading thereto. The defects in the Complaint complained of and the details desired are the following:

1. As to Paragraph 20:

(a) State what is meant by the phrase "a substantial part" of interstate commerce therein referred to.

(b) It cannot be ascertained therefrom whether the "aforesaid interstate commerce" therein referred to is used in a distributive or in a geographical sense or in both a distributive and geographical sense.

Q1 (c) If said "aforesaid interstate commerce" is used in a geographical sense, it cannot be ascertained therefrom what geographical area or areas, intrastate or interstate, are comprehended within said time. State what geographical area is intended to be referred to, if less than the whole of the United States.

(d) There cannot be ascertained therefrom the identity of the "local transportation companies" therein referred to, or any thereof.

(e) There cannot be ascertained therefrom the identity of the "various cities, towns, and counties" therein referred to; or any thereof.

(f) There cannot be ascertained therefrom the identity of the "various states" therein referred to, or any thereof.

(g) It cannot be ascertained therefrom what is meant by the words "local transportation companies in which defendants National, American and Pacific * * * in the future acquire ownership, control, or a substantial financial interest in said local transportation companies"; or what, if any, local transportation companies are thus referred to.

2. As to Paragraph 21:

(a) It cannot be ascertained whether it is claimed that the alleged combination or conspiracy has consisted of (i) concert of action independent of agreement, continuing or otherwise; (ii) agreement, continuing or otherwise, independent of concert of action; or (iii) both agreement, continuing or otherwise, and concert of action.

92 (b) With reference to the "continuing agreement" alleged, it cannot be ascertained therefrom whether it is claimed that all defendants have been parties thereto since on or about January 1, 1937; and, if not, the periods of time during which it is claimed that each of the defendants were, and conversely were not, parties to such agreement cannot be ascertained therefrom.

(c) With reference to the "concert of action" alleged; it cannot be ascertained therefrom whether it is claimed that all defendants participated in fact in each acquisition of or attempt to secure control or acquire a substantial financial interest in, the local transportation companies referred to in Paragraph 20 of the Complaint; and, if not, it cannot be ascertained therefrom which defendants did or did not in fact participate in each such acquisition or attempt.

(d) It cannot be ascertained therefrom whether it is claimed that there was or is one agreement or combination, or conspiracy among all defendants, or two or more agreements, combinations, or conspiracies among some or all defendants; if the latter, the terms of each such agreement, combination or conspiracy and the claimed participants therein cannot be ascertained therefrom.

(e) It cannot be ascertained therefrom whether it is claimed that the alleged "continuing agreement and concert of action" has any terms other than those set forth in the Complaint; and, 93 if so, such other terms cannot be ascertained therefrom.

(f) It cannot be ascertained therefrom as to each defendant and as to such alleged agreement whether it is claimed that such defendant joined or entered into an express agreement, or whether it is claimed that each such agreement is to be inferred or implied.

(g) The identity of the "operating companies" referred to in subdivisions (a), (c), (d), (e), (f), and (g) cannot be ascertained therefrom.

(h) It cannot be ascertained therefrom whether it is claimed that any such agreement embraced "operating companies" other

than those in which control or a financial interest was purchased with money or capital contributed by the supplier defendants; and, if so, the identity of such operating company or companies cannot be ascertained therefrom.

(i) It cannot be ascertained therefrom whether it is claimed that the participation by any supplier defendant in the alleged "continuing agreement and concert of action" was dependent or conditioned upon the participation therein of any other supplier defendant or defendants; if so, the facts in this connection cannot be ascertained therefrom.

(j) It cannot be ascertained therefrom what is meant by the allegations appearing in subparagraph 21 (g) that the motorbuses, petroleum, and tire and tube business of said defendants "would be allocated and divided among the supplier defendants in an artificial, arbitrary and noncompetitive manner."

94 (k) It cannot be ascertained therefrom when or where it is claimed that the defendants or any of them entered into each such agreement, or whether the same was or were express, inferred, or implied, nor can the facts with reference to each such consent or refusal to consent, each such assumption and each such determination be ascertained therefrom. It cannot be ascertained therefrom whether it is claimed that each or any such agreement, consent or refusal to consent, assumption, or determination was reduced to identifiable writings or partially so, or was oral.

3. As to Paragraph 22:

(a) It cannot be ascertained therefrom whether it is claimed that the prices paid to the supplier defendants for tires and tubes, for buses, and for petroleum products, supplied to defendants National, American and Pacific, and their operating companies, or any of them, were generally in excess of, or the same as, or lower than, the prices at which such products were obtainable from other suppliers; nor can the facts in that connection be ascertained therefrom. State what is claimed in that connection. It cannot be ascertained therefrom whether it is claimed that such tires and tubes, such buses, and such petroleum products were generally of an inferior, or of the same, or of a superior grade or quality to the tires and tubes, the buses, and the petroleum products which were obtainable by said defendants from other than the supplier defendants; nor can the facts in that connection be ascertained therefrom. State what is claimed in that connection.

95 (b) As to each alleged agreement made by a supplier defendant with any of said defendants or any of their operating companies, it cannot be ascertained therefrom whether or not each defendant was a party thereto, or if any defendant was not a party thereto, when and in what manner, if at all, such defendant ratified or approved such agreement.

(c) It cannot be ascertained therefrom, as to each defendant, the act or acts claimed to have been committed by it which it is claimed made such defendant a participant in the conspiracies alleged in the Complaint.

4. As to Subparagraph 23 (a) :

There cannot be ascertained therefrom the identity of the alleged "other suppliers" of buses, of tires and tubes, and of petroleum products, which it is claimed were eliminated from competition in the sale of such products to said defendants or their operating companies or any of them, nor can the identity of the cities or other areas where such elimination of competition assertedly occurred be ascertained therefrom.

5. As to Subparagraph 23 (b) :

(a) It cannot be ascertained therefrom how or in what manner the alleged restraint on trade and commerce in the sale of tires, tubes, motorbuses, and petroleum products to the defendants National, American, or Pacific or their operating companies has restricted production, raised prices or otherwise controlled the market of said commodities or eventually will, or was or 96 is intended by the defendants to do so. State the facts with particularity in this connection.

(b) It cannot be ascertained therefrom what detriment, if any, defendants National, American or Pacific, or their operating companies, or other consumers of the products of the supplier defendants, or the public generally, suffered or will suffer as the result of the alleged restraint on trade or commerce. State what detriment, if any, has been suffered or will be suffered by said defendants or any of the other parties mentioned.

(c) It cannot be ascertained therefrom when, where, by what means, or by virtue of what facts the acts and conduct of each supplier defendant substantially or unreasonably restrained trade or commerce in buses, in tires and tubes, and in petroleum products, sold to local transportation systems of the United States in which said defendants or any of them have control or a financial interest.

6. As to Subparagraph 23 (c) :

It cannot be ascertained therefrom when, where, by what means and by virtue of what facts competition was substantially eliminated, suppressed, and excluded in the sale to said defendants and their operating companies of tires and tubes, of motorbuses, and of petroleum products or any of these.

7. As to Subparagraph 23 (d) :

(a) It cannot be ascertained therefrom either, as to motorbuses, as to tires and tubes, or as to petroleum products, what it is claimed constitute or constituted "noncompetitive prices." It cannot be ascertained therefrom whether it is claimed that the prices paid by said defendants or any of their operating companies to any of the supplier defendants were higher than, the same as, or lower than, prices for like commodities obtainable from competitors. The facts upon which the Government predicates the allegation that the prices charged to said defendants and their operating companies by the supplier defendants are or were "noncompetitive prices" cannot be ascertained therefrom. It cannot be ascertained therefrom whether such alleged "noncompetitive prices" were evidenced wholly or in part in identifiable writings.

(b) It cannot be ascertained therefrom whether the alleged act or acts of the supplier defendants in charging "noncompetitive prices" for buses, tires and tubes, and petroleum products, respectively, sold to these defendants, or their operating companies, resulted in detriment to these defendants or to their operating companies or to other customers of said supplier defendants or to the general public. State the nature and effect of such detriment.

8. As to Subparagraph 23 (e) :

It cannot be ascertained therefrom when, where, by what means and by virtue of what facts it is claimed that the alleged nationwide market of said defendants and their operating companies for tires and tubes, for motorbuses, and for petroleum products "has been divided among and allocated to" the supplier defendants; nor can the facts with reference to such asserted allocation and division and the geographical area or areas allegedly affected thereby be ascertained therefrom.

9. As to Paragraphs 20 and 22 :

It cannot be ascertained therefrom whether it is claimed that the "other persons to the plaintiff unknown," or any of them,

were identifiable employees or other identifiable persons either representing the defendants or any of them or under the supervision of their duly authorized officers or agents. State the names and addresses of each such identifiable employee or other person representing any of the defendants or under the supervision of any of their officers or agents.

Said defendants further move that as to any of the above requested information which the Government does not now have but hereafter acquires, it be ordered to furnish the same, in appropriate form or by appropriate amendment, to counsel for said defendant immediately upon the acquisition thereof.

This motion is supported by the accompanying Memorandum of Points and Authorities.

Motion No. 3

Defendant National City Lines, Inc., moves to quash the purported service of process on defendant American City Lines, Inc., and that the Complaint be dismissed as to American City Lines, Inc., on the ground that said American City Lines, Inc., having been merged into National City Lines, Inc., ceased to exist on or about July 15, 1946, and this Court cannot obtain jurisdiction over said American City Lines, Inc., by any purported service of process upon it, all as more fully appears in the accompanying affidavit of C. Frank Reavis.

This motion is based upon the Complaint in the above entitled action, upon the accompanying affidavit of C. Frank Reavis, and upon the accompanying Memorandum of Points and Authorities.

Said defendants and each of them hereby reserve the right at any stage of the proceedings in the above captioned suit, to move to dismiss the suit against said defendants on the ground that the Complaint fails to state a claim upon which relief can be granted.

Said defendants request the Court to hear oral argument of the foregoing motions.

Dated Los Angeles, California, August 11, 1947.

O'MELVENY & MYERS;
PIERCE WORKS,
JACKSON W. CHANCE,
By Jackson W. Chance,
JACKSON W. CHANCE,

*Attorneys for Defendants National City Lines, Inc.,
American City Lines, Inc., and Pacific City Lines, Inc.*

Of Counsel:

HODGES, REAVIS, PANTALEONI & DOWNEY.

100 In the District Court of the United States in and for
the Southern District of California, Central Division

O'MELVY & MYERS

Title Insurance Building, 433 South Spring Street

LOS ANGELES 13, CAL.

Received copy of the within Notice of Motions to Dis. this 11 day
of Aug. 1947.

HAIGHT, TRIPPET & SYVERSON,
Attorney for Defendants.

Received copy of the within Notice of Motions this 11th day of
August 1947.

W. C. DIXON,
H. S.

Attorney for U.S. Government.

Received copy of the within Notice of Motions to Dis. this 11
day of August 1947.

COSGROVE, CLAYTON, CRAMER & DIETHER,
Attorneys for Def. Gen. Motors.

Received copy of the within _____ this 11th
day of August 1947.

FINLAYSON, BENNETT & MORROW.

Received copy of the within Notice of Motions to Dismiss, etc.,
this 11th day of August 1947.

WRIGHT & MILLIKEN,
(— M. JENSEN)

Attorney for Mack Manufacturing Corporation.

Received copy of the within Notice of Motions to Dismiss, etc.,
this 11th day of August 1947.

LAWLER, FELIX & HALL,
By HARRIETT S. ELDER.

101 In the District Court of the United States for the Southern
District of California, Central Division

Civil No. 6747-Y

[Title omitted.]

[File endorsement omitted.]

*Notice of motion to dismiss and motion for more definite statement
or for bill of particulars of the Firestone Tire & Rubber
Company*

Filed Aug. 11, 1947

To Plaintiff and Its Attorneys:

Please take notice that on September 15, 1947, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, in the courtroom of the Honorable Leon R. Yankwich, defendant The Firestone Tire & Rubber Company will move the Court as follows:

(1) To dismiss the complaint on file herein on the ground that this is not a convenient forum to try said action and that the most convenient forum therefor is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

Said motion is based upon this Notice of Motion, upon the affidavit of E. Roy Fitzgerald, upon the Memorandum of Points and Authorities of defendant National City Lines, Inc. (which said affidavit and Points and Authorities are by reference incorporated herein), and upon the records and files of this cause.

102 (2) For a more definite statement or for a bill of particulars of the matters in the complaint which are set forth in the Notice of Motion of defendant National City Lines, Inc., on file in this cause. This motion will be made upon the grounds:

(a) That said matters are not averred with sufficient definiteness or particularity to enable defendant properly to prepare its responsive pleading; and

(b) That said complaint is so vague and ambiguous that defendant cannot reasonably be required to frame a responsive pleading thereto.

This motion will be based upon this Notice of Motion, the Points and Authorities attached to the Notice of Motion of defendant National City Lines, Inc. (which Points and Authorities are by this reference incorporated herein), and the records and files of this cause.

Defendant further moves that as to any of the above requested information which the Government does not now have but hereafter acquires, it be ordered to furnish the same, in appropriate form or by appropriate amendment, to counsel for defendant immediately upon the acquisition thereof.

Defendant hereby reserves the right to file a supplemental or further Memorandum of Points and Authorities in support of each of the foregoing motions, and reserves the right at any stage of the proceedings herein to move to dismiss the complaint or any part thereof on the ground that it fails to state a claim upon which relief can be granted.

Defendant requests the Court to hear oral argument of the foregoing motions.

Dated Los Angeles, California, August 11, 1947.

JOSEPH THOMAS,
HAIGHT, TRIPPET & SYVERTSON,
By F. B. YOAKUM, Jr.,
*Attorneys for Defendant,
The Firestone Tire & Rubber Company.*

Received copy of the within Notice of Motions this 11th day of August 1947.

W. C. DIXON,
H. S.
Attorney for U. S. Government.

103 In the District Court of the United States, Southern District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Joinder of defendant, General Motors Corporation, in motion to dismiss

Filed Aug. 11, 1947

Defendant, General Motors Corporation, joins in the motion of National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., to dismiss the above-entitled action on the ground that this is not a convenient forum to try said action, and that the most convenient forum therefor is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

Dated August 8th, 1947.

HENRY M. HOGAN, and
COSGROVE, CLAYTON, CRAMER & DIETHER,
T. B. Cosgrove,
LEONARD A. DIETHER,
By T. B. COSGROVE,
*Attorney for the Defendant,
General Motors Corporation.*

NOTICE OF MOTION

To the UNITED STATES OF AMERICA and WILLIAM C. DIXON, Esq.,
JESSE R. O'MALLEY, Esq., ROBERT J. RUBIN, Esq., and LEONARD
M. BESSMAN, Esq., its Attorneys:

Please take notice that the undersigned will bring the above Motion on for hearing before this Court in the United States Post Office and Court House, courtroom of Judge Leon R. Yankwich, Los Angeles, California, on the 15th day of September 1947, at the hour of 10:00 o'clock A. M. on said day, or as soon thereafter as counsel can be heard.

You will please take further notice that said Motion will be made upon the files and records herein.

You will please take further notice that said defendant will rely upon the Affidavit of E. Roy Fitzgerald and upon the Points and Authorities of defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., filed herein in support of said defendant's Motion to Dismiss.

HENRY M. HOGAN, and
COSGROVE, CLAYTON, CRAMER & DIETHER,
T. B. Cosgrove,
LEONARD A. DIETHER,

By T. B. COSGROVE,

*Attorneys for Defendant,
General Motors Corporation.*

105 In the District Court of the United States for the
Southern District of California, Central Division

Civil Action No. 6747-Y

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., DEFENDANTS

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,

County of Los Angeles, ss:

Dorothy P. Jones, being first duly sworn, deposes and says:
That she is a citizen of the United States and a resident of Los Angeles County, California; that her business address is 1031 Rowan Building, 458 South Spring Street, Los Angeles, California; that she is over the age of eighteen years, and is not a party to the above-entitled action;

That on August 11, 1947, she deposited in the United States Mails at Los Angeles, in an envelope bearing the requisite postage, a copy of "Joinder of Defendant, General Motors Corporation, in Motion to Dismiss" addressed to: William C. Dixon, Esq.; Jackson W. Chance, Esq., O'Melveny & Myers; Oscar Trippet, Esq., Haight, Trippet & Syvertson; Hubert T. Morrow, Esq., Bennett, Finlayson & Morrow; Charles E. Millikan, Esq., Wright & Millikan; John M. Hall, Esq., Lawler, Felix & Hall, at their last known address, at which place there is a delivery service by United States Mails.

DOROTHY P. JONES.

Subscribed and sworn to before me this 11th day of August 1947.

[NOTARIAL SEAL]

ROSE SCHINDELMAN,

Notary Public in and for said County and State.

107 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Notice of motion, of Defendant Phillips Petroleum Company, to dismiss; notice of motion of said Defendant for a more definite statement or bill of particulars

Filed Aug. 11, 1947

To the above-named plaintiff and its attorneys of record:

Please take notice that on the 15th day of September 1947, at 10 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, in the Court Room of the Honorable Leon R. Yankwich, United States District Judge, the Second Floor of the Federal Building, 312 North Spring Street, City of Los Angeles, California, defendant Phillips Petroleum Company will move the Court as follows:

MOTION TO DISMISS

To dismiss the action and the Complaint therein on the ground that the above District is not a convenient forum in which
108 to try said suit and that the most convenient forum therefor is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

Said Motion will be based upon the Complaint on file herein, upon the Affidavit of E. Roy Fitzgerald filed in connection with

similar Notice of Motion of National City Lines, Inc., and upon all other affidavits filed on behalf of the like motion of other defendants herein, said affidavits being, for the convenience of the Court and to avoid repetition, hereby adopted, referred to, and relied upon, to the same effect as though the same were filed herewith.

Likewise, for the convenience of the Court and to avoid repetition, said Motion will be based upon and hereby refers to the Memorandum of Points and Authorities filed herein by the defendant National City Lines, Inc., and also any memoranda filed by any others of the defendants, in support of their respective motions to dismiss.

Motion for more definite statement or bill of particulars

As an alternative to the foregoing relief this defendant Phillips Petroleum Company, at the time and place aforesaid, will move the Court to make an order for a more definite statement and for a bill of particulars of the matters in the Complaint as hereinafter specified, upon the ground that said Complaint is so vague and ambiguous that this defendant cannot reasonably be required to frame a responsive pleading, and that the matters in said pleading are not averred with sufficient definiteness or particularity to enable this defendant properly to prepare its responsive pleading or to properly prepare for trial. As to the particulars of the defects in the Complaint complained of and the details and particulars desired, for the convenience of the Court and to avoid repetition, this defendant hereby adopts, refers to, and relies upon, each and all of the specifications and particulars set forth in the Notice of Motion for a more definite statement of the defendant National City Lines, Inc. on file herein, the same as though the same were herein specifically set forth.

In support of the foregoing motion, defendant Phillips Petroleum Company, for the convenience of the Court and to avoid repetition, hereby adopts, refers to, and relies upon the Memorandum of Points and Authorities filed herein of National City Lines, Inc., in support of its proposed motion for a more definite statement, and likewise to such memoranda as may be filed herein by any of the other defendants in connection with their motions for more definite statement of the matters in the Complaint.

This defendant hereby reserves the right at any stage of the proceedings in the above suit, to move to dismiss the action as to defendant Phillips Petroleum Company on the ground that the complaint fails to state a claim against said defendant upon which relief can be granted.

This defendant requests the Court to permit oral argument in support of the foregoing motions.

Dated at Los Angeles, California, this 11th day of August 1947.

H. T. MORROW and
FINLAYSON, BENNETT & MORROW,
By H. T. Morrow,
*Attorneys for Defendant,
Phillips Petroleum Company.*

Received copy of the within Notice of Motion this 11th day of August 1947.

W. C. DIXON,
H. S. B.
Attorney for U. S. Government.

110 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Amendment and supplement of National City Lines, Inc., et al., to motion to dismiss.

Filed Aug. 28, 1947

Defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., hereby amend and supplement Motion No. 1 of their motions heretofore filed and noticed for hearing on September 15, 1947, by adding a further ground of said motion as follows:

The above-entitled Court did, on August 14, 1947, make and enter an Order in that certain proceeding then pending in said Court and being entitled "United States of America v. National City Lines, Inc., et al., Defendants," being Criminal No. 19270 in the files of said Court, transferring said proceeding to the United States District Court for the Northern District of Illinois,

111 Eastern Division (Chicago); that the transactions upon which the indictment was returned in said No. 19270 are identical with the transactions set forth and alleged in the Complaint on file in the above-entitled suit; and that it is not in the interests of justice that these defendants be required to defend this equity suit at Los Angeles, California, when the criminal proceeding involving the same transactions has been transferred to and is now pending in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

This amendment and supplement to motion to dismiss is based upon the Complaint on file herein, upon said motion to dismiss and the notice of motion accompanying said motion, upon the affidavit of E. Roy Fitzgerald and the memorandum of points and authorities heretofore filed herein, upon the accompanying affidavit of Jackson W. Chance and the Indictment, Opinion and Order (copies of each of which are attached to said affidavit of Jackson W. Chance), and upon the documents, memoranda, papers and minutes incorporated by reference into and made a part of said last-named affidavit.

Dated at Los Angeles, California, August 26, 1947.

O'MELVENY & MYERS,
PIERCE WORKS,
JACKSON W. CHANCE,
By Jackson W. Chance,
JACKSON W. CHANCE,

Attorneys for National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.

Of Counsel:

HODGES, REAVIS, PANTALEONI & DOWNEY.

It is ordered that the motion to dismiss heretofore filed in the above-entitled action and noticed for hearing on September 15, 1947, may be amended and supplemented as set forth above.

LEON R. YANKWICH,
United States District Judge.

112 In the District Court of the United States, Southern
District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Affidavit of Jackson W. Chance in support of amendment and supplement to motion to dismiss

Filed Aug. 28, 1947

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Jackson W. Chance, being first duly sworn, deposes and says that:

He is one of the counsel of record for defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., in the above-entitled suit; and is one of counsel of record for said defendants and has made a study of and is familiar with the files and records in that certain criminal proceeding entitled

"United States of America v. National City Lines, Inc., et al., Defendants;" pending in the United States District Court for the Southern District of California, Central Division, until transferred as hereinafter described, and being Criminal No. 19270 in the files of said Court.

The indictment in said criminal proceeding No. 19270 was returned in the above-entitled Court on the same date that the Complaint in the above-entitled suit was filed. The transactions complained of and the charges made in the indictment in said No. 19270 are the same as those alleged in the Complaint on file herein; the allegations of the Complaint on file herein are substantially the same as the charges of the indictment in said criminal proceeding; and the corporate defendants in said criminal proceedings are identical with the corporate defendants named in the Complaint on file herein; all of which more fully appears from said indictment, a true and correct copy of which is attached hereto marked Exhibit A and made a part hereof.

113 On July 14, 1947, a motion to transfer said criminal proceeding to the United States District Court for the Northern District of Illinois, Eastern Division (Chicago) was presented to the above-entitled Court in said Criminal No. 19270, pursuant to Federal Rules of Criminal Procedure, Rule No. 21 (b). An affidavit of E. Roy Fitzgerald, President of defendant National City Lines, Inc., was filed in support of said motion, setting forth identically the same facts as are set forth in the affidavit of said E. Roy Fitzgerald filed in the above entitled civil suit in support of the motion to dismiss on the grounds of forum non conveniens. A counter affidavit of Jesse O'Malley, one of the attorneys for the United States in said criminal proceeding No. 19270, was filed therein in reply to said affidavit of E. Roy Fitzgerald and in opposition to said motion to transfer. An answering affidavit of E. Roy Fitzgerald was also filed in support of said motion. Said motion to transfer was orally argued and briefs were submitted by the respective parties.

On August 14, 1947, the above-entitled Court in said criminal proceeding No. 19270 rendered a written Opinion, a true and correct copy of which is attached hereto, marked "Exhibit B" and made a part hereof; and also made and entered an Order, a true and correct copy of which is attached hereto, marked "Exhibit C," and made a part hereof, determining that in the interests of justice said proceeding should be transferred to and tried by the United States District Court for the Northern District of Illinois, Eastern Division (Chicago), and ordered said proceeding transferred to the District Court in Chicago, Illinois, and said proceedings is now transferred to and is pending in said District Court in Chicago.

The motion to transfer, the affidavit of E. Roy Fitzgerald in support thereof, the counter affidavit of Jesse O'Malley in opposition to said motion, the reply affidavit of E. Roy Fitzgerald in support thereof, the several memoranda of points and authorities in support of and in opposition to said motion, and the minutes of the Court in connection with said motion and Order, all in said criminal proceeding No. 19270, are by this express reference thereto hereby incorporated herein and made a part hereof as fully as though set forth at length herein.

JACKSON W. CHANCE.

Subscribed and sworn to before me, this 27th day of August, 1947.

[SEAL]

RURY E. SLOANAKER,
Notary Public in and for the County
of Los Angeles, State of California.

114

Exhibit "A" to affidavit

In the District Court of the United States, Southern
District of California, Central Division

Criminal Action No. 19270

UNITED STATES OF AMERICA

v.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, FEDERAL ENGINEERING CORPORATION, E. ROY FITZGERALD, FOSTER G. BEAMSLEY, H. C. GROSSMAN, HENRY C. JUDD, L. R. JACKSON, B. F. STRADLEY, A. M. HUGHES, DEFENDANTS

INDICTMENT

The Grand Jury charges:

FIRST COUNT

1. PERIOD OF TIME COVERED BY THE INDICTMENT

1. Each of the allegations contained in this Indictment, unless otherwise specified, shall be deemed to refer to the period beginning on or about January 1, 1937, the exact date being to the Grand Jurors unknown, and continuing thereafter up to and including the date of presentment of this Indictment.

II. DEFENDANTS

2. National City Lines, Inc. (sometimes herein after referred to as "National") is hereby indicted and made a defendant. 115 Said defendant is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business in Chicago, Illinois.

3. American City Lines, Inc. (sometimes hereinafter referred to as "American") is hereby indicted and made a defendant. Said defendant American is a corporation which was organized in 1943 under the laws of the State of Delaware. Since 1943 American has been a subsidiary of defendant National and has managed and operated local transportation systems throughout the United States on behalf of defendant National. Said defendant American has its principal place of business in Chicago, Illinois.

4. Pacific City Lines, Inc. (sometimes hereinafter referred to as "Pacific") is hereby indicted and made a defendant. Said defendant Pacific is a corporation organized and existing under the laws of the State of Delaware and is a subsidiary of defendant National. Pacific has its principal place of business in Oakland, California. At various times during the period beginning on or about February 1938 and ending about August 16, 1946, defendants National, Federal Engineering Corporation, General Motors Corporation and Firestone Tire & Rubber Company each owned a stock interest in Pacific. Since about August 16, 1946, Pacific has been a wholly owned subsidiary of defendant National. Pacific operates and manages various local transportation systems located in the States of California, Washington and Utah on behalf of defendant National.

5. Standard Oil Company of California, a Delaware corporation (sometimes hereinafter referred to as "Standard" and as a "supplier defendant"), is hereby indicted and made a defendant. Said defendant Standard has its principal place of business in the City of San Francisco, California, and is engaged in the production and sale of petroleum products.

6. Federal Engineering Corporation, a California corporation (sometimes hereinafter referred to as "Federal"), is hereby indicted and made a defendant. Said defendant Federal is a wholly owned subsidiary of defendant Standard and has its principal place of business in San Francisco, California. Federal is engaged in the business of making and managing investments on behalf of defendant Standard.

7. Phillips Petroleum Company, a Delaware corporation (sometimes hereinafter referred to as "Phillips" and as a "supplier defendant"), is hereby indicted and made a defendant. Said defendant Phillips has its principal place of business in the City of

Bartlesville, Oklahoma, and is engaged in the production and sale of petroleum products.

116 8. General Motors Corporation, a Delaware corporation (sometimes hereinafter referred to as "General Motors" and as a "supplier defendant"), is hereby indicted and made a defendant. Said defendant General Motors has its principal place of business in the City of Detroit, Michigan, and is engaged, among other things, in the production and sale of motorbuses. On September 30, 1943, General Motors acquired the assets and assumed certain obligations of Yellow Truck and Coach Manufacturing Company, and the business formerly carried on by said Yellow Truck and Coach Manufacturing Company has since been carried on by the GMC Truck and Coach Division of said defendant General Motors. The term "General Motors" is used herein to mean Yellow Truck and Coach Manufacturing Company for the period prior to September 30, 1943.

9. Firestone Tire and Rubber Company, an Ohio corporation (sometimes hereinafter referred to as "Firestone" and as a "supplier defendant"), is hereby indicted and made a defendant. Said defendant Firestone has its principal place of business in the City of Akron, Ohio, and is engaged in the production and sale of tires, tubes, and other rubber and automotive products.

10. Mack Manufacturing Corporation, a Delaware corporation (sometimes hereinafter referred to as "Mack" and as a "supplier defendant"), is hereby indicted and made a defendant. Said defendant Mack has its principal place of business in New York, New York, and is engaged in the manufacture and sale of motor-trucks and buses.

11. The individuals whose names and addresses are set forth below are hereby indicted and made defendants. Each of said individuals is associated with or employed by the defendant corporation as shown below. Each of the individual defendants within the period of time covered by the Indictment, including the three years next preceding the date of this Indictment, has been actively engaged in the management and control of the policies and acts of the defendant corporation which he represents or with which he is associated, and has participated in, authorized, ordered, or done some of the acts constituting the offenses hereinafter charged.

117 Defendant's address and Defendant Corporation with which associated:

E. Roy Fitzgerald, President and Director, Chicago, Ill., National.

Foster G. Beamsley, Vice-Pres. and Director, Chicago, Ill., National.

H. C. Grossman, Assistant Secretary, Detroit, Mich., General Motors.

Henry C. Judd, Treasurer, San Francisco, Calif., Standard and Federal.

L. R. Jackson, Vice President, Akron, Ohio., Firestone.

B. F. Stradley, Secretary-Treasurer, Bartlesville, Okla., Phillips.

A. M. Hughes, Vice-Pres. and Director, Bartlesville, Okla., Phillips.

12. Whenever it is hereinafter alleged in this Indictment that a defendant corporation did or performed any act or thing, the allegation shall be deemed to charge that its duly authorized directors, officers, and agents, including the individual defendants named herein, together with other persons to the Grand Jury unknown, have approved, authorized, ordered, directed, or done such act or thing.

III. NATURE OF TRADE AND COMMERCE INVOLVED

13. Throughout the United States, transportation systems are operated by privately owned or publicly owned companies to provide local transportation service in cities, towns, counties, and other governmental subdivisions of the various states. Such companies purchase and use large quantities of busses, tires, tubes, and petroleum products, as well as electrically propelled streetcars in the operation of said transportation systems.

14. National is a holding company, the operations of which are directed from National's office in Chicago, Illinois. National and its subsidiaries, American and Pacific, own, control, or have a substantial financial interest in corporations, sometimes hereinafter referred to as "operating companies," which are located throughout the United States and which are engaged in the business of providing local transportation service to more than forty-two cities and other governmental divisions in sixteen states of the United States. The term "operating companies" as

118 used hereinafter is intended to include American and Pacific in the cities and governmental divisions in which said defendants operate local transportation systems. Said operating companies are located and operated in, among other places, the Cities and States of Baltimore, Maryland; Tampa, Florida; Mobile, Montgomery, Alabama; Beaumont, Port Arthur, El Paso, Texas; Aurora, Elgin, Bloomington, Normal, Champaign, Urbana, Danville, Decatur, East St. Louis, Joliet, Quincy, Illinois; Terre Haute, Indiana; Jackson, Kalamazoo, Pontiac, Saginaw, Michigan; Canton, Portsmouth, Ohio; Burlington, Cedar Rapids,

Ottumwa, Iowa; Tulsa, Oklahoma; Lincoln, Nebraska; St. Louis, Missouri; Jackson, Mississippi; Salt Lake City, Utah; Everett, Spokane, Washington; Sacramento, Eureka, Fresno, Glendale, Pasadena, San Jose, Stockton, Los Angeles, Oakland, and Long Beach, California. The operating companies which provide the local transportation service frequently use both motorbusses and electrically propelled streetcars. It is the policy of National to have the operating companies provide local transportation service by motorbusses wherever possible.

15. The operating companies of defendants National, American and Pacific purchase and use large quantities of motorbusses, tires, tubes, and petroleum products which are manufactured and produced in various states of the United States by the supplier defendants herein and which are shipped from said places of production and manufacture across state lines and in interstate commerce by supplier defendants to the defendants National, American, Pacific and their operating companies, located, among other places, in the States and Cities of the United States named in Paragraph 14 herein. The dollar volume of such products purchased by the defendants National, American, Pacific, and their operating companies from the supplier defendants herein during the year 1945 was approximately \$5,000,000.

16. Defendant General Motors produces automobile and automotive equipment in plants located in twelve different states of the United States, including the State of Michigan. In said plants, General Motors manufactures motorbusses which are sold and shipped in interstate commerce to defendants National, American and Pacific, and their operating companies. Sales of motorbusses by defendant General Motors to defendants National, American and Pacific and their operating companies were in excess of \$25,000,000 for the years 1936 to 1946, inclusive.

17. Defendant Firestone has plants in the States of Ohio, Tennessee, and California, in which automobile tires and tubes
119 are manufactured for and shipped to defendants National, American and Pacific, and their operating companies. Annual sales of tires and tubes by defendant Firestone to Defendants National, American and Pacific and their operating companies are now in excess of \$450,000.

18. The production of petroleum products by defendant Phillips is concentrated in the State of Texas, Oklahoma, and Kansas, from which States said products are shipped in interstate commerce into the States of Michigan, Illinois, Indiana, Oklahoma, Iowa, Nebraska, Texas, and Missouri for use by defendants National and American and their operating companies. Annual sales of petroleum products by defendant Phillips to defendants

National and American and their operating companies are now in excess of \$950,000.

19. Defendant Standard has large petroleum holdings in fields located in California, Texas, New Mexico, Colorado, Mississippi, and Louisiana, but production and refining of petroleum products by said Company is concentrated in the States of California and Texas, from which states petroleum products are shipped in interstate commerce to defendants National, American and Pacific, and their operating companies in the States of Washington, Utah and California.

20. Defendant Mack has plants in New Jersey and Pennsylvania, in which motorbusses are manufactured for and shipped to defendants National, American and Pacific and their operating companies. Total sales made by defendant Mack to defendants National, American and Pacific, and their operating companies during the period covered by this Indictment are in excess of three and one-half million dollars.

IV. THE CONSPIRACY

21. Beginning on or about January 1, 1937, the exact date being to the Grand Jury unknown, and continuing to and including the date of the return of this Indictment, the defendants, together with other persons to the Grand Jury unknown, have knowingly and continuously engaged in wrongful and unlawful combination and conspiracy to acquire or otherwise secure control of or acquire a substantial financial interest in a substantial part of the companies which provide local transportation service in the various cities, towns, and counties of the several states of the United States, and to eliminate and exclude all competition in the sale of motorbusses, petroleum products, tires, and tubes to the local transportation companies owned or controlled by or in which National, American, or Pacific had a substantial financial interest, and to local transportation companies in which said companies acquired or, in the future, acquire ownership, control, or a substantial financial interest, all in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. 1), commonly known as the Sherman Act.

22. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been and are:

(a) That the supplier defendants Firestone, Standard, Phillips, General Motors, and Mack would furnish money and capital to defendants National, American, and Pacific, and that said defendants would purchase and cause their operating companies to purchase substantially all of their requirements of tires, tubes,

petroleum products, and busses from said supplier defendants to the exclusion of products competitive therewith;

(b) That said money and capital made available by the supplier defendants would be utilized by defendants National, American, and Pacific to purchase or secure the control of or a financial interest in local transit systems located in the various states of the United States when the securing of such control or interest in said local transit systems would further the sale of and create an additional market for the products of the supplier defendants to the exclusion of products competitive thereto;

(c) That defendants National, American, Pacific, and their operating companies, would not renew or enter into any contracts for the purchase, rental, or use of tires, tubes, motorbusses, or petroleum products from suppliers other than the supplier defendants without the consent of the supplier defendants servicing the territory wherein such products and equipment were to be used;

(d) That defendants National, American, and Pacific would not dispose of their interest in any operating company without requiring the party acquiring such operating company or equipment thereof to assume the obligation of continuing to purchase its requirements of tires, tubes, motorbusses, and petroleum products from the supplier defendants herein;

(e) That neither defendants National, American, and Pacific nor their operating companies would convert or change the
121 equipment used by them from a type using the products sold by the supplier defendants to any other type without the consent of the supplier defendants herein;

(f) That neither defendants National, American and Pacific nor their operating companies would purchase any new type of equipment which would use products other than the products sold by the supplier defendants without the consent of the supplier defendants herein;

(g) That the motorbus, petroleum, tire, and tube business of defendants National, American, Pacific, and their operating companies would be allocated and divided among the supplier defendants in an artificial, arbitrary and noncompetitive manner, as is more fully set forth in Paragraph 23 (b) herein.

(h) That as National, American, or Pacific acquired local transportation systems in the Eastern section of the United States, this market would be allocated to and preempted by a company selling petroleum products in the Eastern section of the United States.

23. During the period of time covered by this Indictment and for the purpose of forming and effectuating the aforesaid com-

bination and conspiracy, the defendants and other persons to the Grand Jury unknown, by agreement and concert of action, have done the things which, as hereinbefore alleged, they conspired to do, including but not limited to the following acts:

(a) Between January 1, 1939 and the date of the presentment of this Indictment, the supplier defendants purchased stock in defendants National, American, and Pacific, substantially all of the proceeds of which were used by said defendants to acquire control of or financial interests in local transit systems throughout the United States. Said stock purchases by the supplier defendants were in the approximate amounts as follows:

Name of Supplier Defendant:	Amount paid for stock purchased
Standard Oil Company of California	
Federal Engineering Corporation	\$2, 074, 310. 57
General Motors Corporation	3, 190, 802. 32
Phillips Petroleum Company	1, 574, 064. 82
Firestone Tire & Rubber Company	1, 383, 403. 41
Mack Manufacturing Corporation	1, 300, 071. 43

122 (b) The business of supplying tires, tubes, motorbusses, and petroleum products to the defendants National, American, Pacific, and their operating companies was and is divided among the supplier defendants as follows:

(1) The defendant Firestone was allocated and has supplied substantially all the automotive tires and tubes required by the operating companies of National, American, and Pacific;

(2) The defendants General Motors and Mack were allocated and have supplied substantially all the motorbusses used by defendants National, American, Pacific, and their operating companies. This motorbus business was divided between defendant General Motors and defendant Mack as follows: Defendant General Motors was allocated and it furnished approximately 85% of all the motorbusses required by defendant National and its operating companies as of August 2, 1939, and approximately 42.5% of all motor busses required by any operating company in which defendant National thereafter acquired ownership, control, or a substantial financial interest. Defendant Mack was allocated and it furnished approximately 42.5% of all motorbusses required by the operating companies in which National acquired ownership, control, or a substantial financial interest after August 2, 1939. The remaining 15% of said motorbus business was reserved for emergency purchases or for disposition as agreed upon by the supplier defendants;

(3) The petroleum products business of National, American, Pacific, and their operating companies, was and is divided in such a manner that the defendant Standard provides substantially all

the petroleum products requirements of the said defendants and their operating companies doing business on the Pacific Coast and in adjacent areas, including but not limited to the States of California, Washington, and Utah, and the defendant Phillips provides substantially all the petroleum products requirements of the defendants National and American and their operating companies located in the Midwestern section of the United States, including but not limited to the States of Michigan, Indiana, Illinois, Missouri, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma.

123 (c) Defendants National, American, and Pacific have acquired a financial interest in or control of local transportation systems in cities and areas including but not limited to the following: Los Angeles, California; St. Louis, Missouri; Baltimore, Maryland; Spokane, Washington; Salt Lake City, Utah; and Tampa, Florida.

V. EFFECTS OF THE CONSPIRACY

24. The combination and conspiracy hereinbefore alleged have had, as intended by the defendants, the following effects, among others:

(a) Eliminating competition from other suppliers in the sale of busses, tires, tubes, and petroleum products to defendants National, American, Pacific, and their operating companies;

(b) Substantially and unreasonably restraining interstate trade and commerce in tires, tubes, motorbusses, and petroleum products sold to local transportation systems of the United States in which defendants National, American, and Pacific have or acquire a financial interest;

(c) Substantially eliminating, suppressing, and excluding competition in the sale to defendants National, American and Pacific, and their operating companies, of tires, tubes, motorbusses, and petroleum products;

(d) Charging noncompetitive prices for tires, tubes, motorbusses, and petroleum products sold to defendants National, American, Pacific, and their operating companies;

(e) The nation-wide market of defendants National, American, Pacific, and their operating companies for tires, tubes, motorbusses, and petroleum products has been divided among and allocated to the supplier defendants herein.

VI. JURISDICTION AND VENUE

25. The combination and conspiracy herein alleged has been carried out in part within the Southern District of California, Central Division. Pursuant to said combination and conspiracy

and in furtherance thereof, defendant American, on or about January 10, 1945, the exact date being to the Grand Jury unknown, purchased a controlling interest in the properties theretofore operated by the Los Angeles Railway Corporation of the City of Los Angeles, California. Defendant American made the
124 purchase pursuant to a verbal understanding entered into between it and defendant Federal on or about December 21, 1944, the exact date being to the Grand Jury unknown, whereby defendant Federal supplied defendant American with the sum of \$1,074,064.82 to be used with other funds in acquiring control of the Los Angeles Railway Corporation. Defendant Federal received 10,000 shares of 5% preferred and 13,333 shares of common stock in defendant American for said \$1,074,064.82. On or about January 10, 1945, defendant American assumed and took over the control of the Los Angeles Railway Corporation, now known as the Los Angeles Transit Lines. Pursuant to the aforementioned oral understanding between defendants Federal and American, defendant Standard on or about May 7, 1945, was granted a contract by the Los Angeles Transit Lines whereby defendant Standard secured the right to furnish 50% of the gasoline and Diesel fuel and all of the other petroleum products requirements of the Los Angeles Transit Lines for a period of ten years beginning June 1, 1945, said contract to remain in force after May 31, 1955, unless terminated by twelve months' written notice by either party thereto. Under said contract it was agreed that existing contracts covering the purchase of petroleum products by the Los Angeles Transit Lines from suppliers other than defendant Standard were to be terminated at their earliest possible termination date. On or about May 1, 1946, said contract was amended to provide that the Los Angeles Transit Lines should purchase all of its petroleum products requirements from defendant Standard and that the contract should remain in effect until April 30, 1956, and thereafter until terminated by twelve months' written notice from either defendant Standard or the Los Angeles Transit Lines.

COUNT II

26. Each and every allegation contained in this Indictment in Paragraphs numbered 1 through 20, inclusive, is hereby realleged with the same force and effect as though said allegations were here set forth in full.

I. CONSPIRACY TO MONOPOLIZE

27. Beginning on or about January 1, 1937, the exact date being to the Grand Jury unknown, and continuing thereafter up to and including this date of the return of this Indictment, the defendants

and others to the Grand Jury unknown have knowingly, wrongfully, and unlawfully, combined and conspired to monopolize part of the interstate trade and commerce of the United States, 125 to wit, that part consisting of the sale of motorbusses, petroleum products, tires, and tubes used by local transportation systems in those cities, towns, and counties in which defendants National, American, and Pacific owned, controlled, or had a substantial financial interest in, or acquired, or in the future, acquire, ownership, control, or a substantial financial interest in, said local transportation systems, in violation of Section 2 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. 2), commonly known as the Sherman Act.

28. The aforesaid combination and conspiracy to monopolize have consisted of a continuing agreement and concert of action among the defendants and others to the Grand Jury unknown, the substantial terms of which have been and are:

(a) That the supplier defendants Firestone, Standard, Phillips, General Motors, and Mack would furnish money and capital to defendants National, American, and Pacific, and that said defendants would purchase and cause their operating companies to purchase substantially all of their requirements of tires, tubes, petroleum products, and busses from said supplier defendants, to the exclusion of products competitive therewith;

(b) That said money and capital made available by the supplier defendants would be utilized by defendants National, American, and Pacific to purchase or secure the control of, or a financial interest in, local transit systems located in the various states of the United States when the securing of such control or interest in said local transit systems would further the sale of and create an additional market for the products of the supplier defendants to the exclusion of products competitive thereto;

(c) That defendants National, American, Pacific, and their operating companies, would not renew or enter into any contracts for the purchase, rental, or use of tires, tubes, motorbusses, or petroleum products from suppliers other than the supplier defendants without the consent of the supplier defendants servicing the territory wherein such products and equipment were to be used;

(d) That defendants National, American, and Pacific would not dispose of their interest in any operating company without requiring the party acquiring such operating company or equipment thereof to assume the obligation of continuing to purchase its requirements of tires, tubes, motorbusses, and petroleum products from the supplier defendants herein;

126 (e) That neither defendants National, American and Pacific, nor their operating companies would convert or change the equipment used by them from a type using the products sold by the supplier defendants to any other type without the consent of the supplier defendants herein:

(f) That neither defendants National, American and Pacific, nor their operating companies would purchase any new type of equipment which would use products other than the products sold by the supplier defendants without the consent of the supplier defendants herein;

(g) That the motorbus, petroleum, tire, and tube business of defendants National, American, Pacific, and their operating companies would be allocated and divided among the supplier defendants in an artificial, arbitrary and noncompetitive manner, as is more fully set forth in Paragraph 23 (b) herein.

(h) That as National, American, or Pacific acquired local transportation systems in the Eastern section of the United States, this market would be allocated to and preempted by a company selling petroleum products in the Eastern section of the United States.

29. During the period of time covered by this Indictment and for the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and other persons to the Grand Jury unknown, by agreement and concert of action, have done the things which, as hereinbefore alleged, they conspired to do, including but not limited to the following acts:

(a) Between January 1, 1939, and the date of the presentment of this Indictment, the supplier defendants purchased stock in defendants National, American, and Pacific, substantially all of the proceeds of which were used by said defendants to acquire control of or financial interests in local transit systems throughout the United States. Said stock purchases by the supplier defendants were in the approximate amounts as follows:

Name of Supplier Defendant:	Amount paid for stock purchased
Standard Oil Company of California, Federal Engineering Corporation.....	\$2,074,310.57
General Motors Corporation.....	3,190,802.32
Phillips Petroleum Company.....	1,574,064.82
Firestone Tire & Rubber Company.....	1,383,403.41
Mack Manufacturing Corporation.....	1,300,071.43

127 (b) The business of supplying tires, tubes, motorbusses, and petroleum products to the defendants National, American, Pacific, and their operating companies was and is divided among the supplier defendants as follows:

(1) The defendant Firestone was allocated and has supplied substantially all the automotive tires and tubes required by the operating companies of National, American, and Pacific;

(2) The defendants General Motors and Mack were allocated and have supplied substantially all the motorbusses used by defendants National, American, Pacific, and their operating companies. This motorbus business was divided between defendant General Motors and defendant Mack as follows: Defendant General Motors was allocated and it furnished approximately 85% of all the motorbusses required by defendant National and its operating companies as of August 2, 1939, and approximately 42.5% of all motorbusses required by any operating company in which defendant National thereafter required ownership, control, or a substantial financial interest. Defendant Mack was allocated and it furnished approximately 42.5% of all motorbusses required by the operating companies in which National acquired ownership, control, or a substantial financial interest after August 2, 1939. The remaining 15% of said motorbus business was reserved for emergency purchases or for disposition as agreed upon by the supplier defendants;

(3) The petroleum products business of National, American, Pacific, and their operating companies, was and is divided in such a manner that the defendant Standard provides substantially all the petroleum products requirements of the said defendants and their operating companies doing business on the Pacific Coast and in adjacent areas, including but not limited to the States of California, Washington, and Utah, and the defendant Phillips provides substantially all the petroleum products requirements of the defendants National and American and their operating companies located in the Midwestern section of the United States, including but not limited to the States of Michigan, Indiana, Illinois, 128 Missouri, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma.

(c) Defendants National, American, and Pacific have acquired a financial interest in or control of local transportation systems in cities and areas including but not limited to the following: Los Angeles, California; St. Louis, Missouri; Baltimore, Maryland; Spokane, Washington; Salt Lake City, Utah; and Tampa, Florida.

II. EFFECTS OF THE CONSPIRACY

30. The combination and conspiracy hereinbefore alleged have had, as intended by the defendants, the following effects, among others:

(a) Eliminating competition from other suppliers in the sale of busses, tires, tubes, and petroleum products to defendants National, American, Pacific, and their operating companies;

(b) Substantially and unreasonably restraining interstate trade and commerce in tires, tubes, motorbusses, and petroleum products sold to local transportation systems of the United States in which defendants National, American and Pacific have or acquire a financial interest;

(c) Substantially eliminating, suppressing, and excluding competition in the sale to defendants National, American and Pacific and their operating companies of tires, tubes, motorbusses, and petroleum products;

(d) Charging noncompetitive prices for tires, tubes, motorbusses, and petroleum products sold to defendants National, American, Pacific, and their operating companies;

(e) The nation-wide market of defendants National, American, Pacific, and their operating companies for tires, tubes, motorbusses, and petroleum products has been divided among and allocated to the supplier defendants herein.

III. JURISDICTION AND VENUE

31. The combination and conspiracy herein alleged has been carried out in part within the Southern District of California, Central Division. Pursuant to said combination and conspiracy and in furtherance thereof, defendant American, on or about January 10, 1945, the exact date being to the Grand Jury unknown, 129 purchased a controlling interest in the properties theretofore operated by the Los Angeles Railway Corporation of the City of Los Angeles, California. Defendant American made the purchase pursuant to a verbal understanding entered into between it and defendant Federal on or about December 21, 1944, the exact date being to the Grand Jury unknown, whereby defendant Federal supplied defendant American with the sum of \$1,074,064.82 to be used with other funds in acquiring control of the Los Angeles Railway Corporation. Defendant Federal received 10,000 shares of 5% preferred and 13,333 shares of common stock in defendant American for said \$1,074,064.82. On or about January 10, 1945, defendant American assumed and took over the control of the Los Angeles Railway Corporation, now known as the Los Angeles Transit Lines. Pursuant to the aforementioned oral understanding between defendants Federal and American, defendant Standard on or about May 7, 1945, was granted a con-

tract by the Los Angeles Transit Lines whereby defendant Standard secured the right to furnish 50% of the gasoline and Diesel fuel and all of the other petroleum products requirements of the Los Angeles Transit Lines for a period of ten years beginning June 1, 1945, said contract to remain in force after May 31, 1955, unless terminated by twelve months' written notice by either party thereto. Under said contract it was agreed that existing contracts covering the purchase of petroleum products by the Los Angeles Transit Lines from suppliers other than defendant Standard were to be terminated at their earliest possible termination date. On or about May 1, 1946, said contract was amended to provide that the Los Angeles Transit Lines should purchase all of its petroleum products requirements from defendant Standard and that the contract should remain in effect until April 30, 1956, and thereafter until terminated by twelve months' written notice from either defendant Standard or the Los Angeles Transit Lines.

Dated April 9, 1947

A True Bill:

JOHN M. MACADAM, *Foreman.*

William C. Dixon,

WILLIAM C. DIXON,

Special Assistant to the Attorney General.

130

Jesse R. O'Malley,

JESSE R. O'MALLEY,

Special Attorney.

Robert J. Rubin,

ROBERT J. RUBIN,

Special Assistants to the Attorney General.

Leonard M. Bessman,

LEONARD M. BESSMAN,

Special Attorney.

Wendell Berge,

WENDELL BERGE,

Assistant Attorney General.

James E. Kilday,

JAMES E. KILDAY,

Special Assistant to the Attorney General.

James M. Carter,

JAMES M. CARTER,

United States Attorney.

131

Exhibit "B" to affidavit

In the District Court of the United States Southern
District of California, Central Division

No. 19270 Cr.

Honorable LEON R. YANKWICH, Judge

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC
CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL
MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK
MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CALI-
FORNIA, FEDERAL ENGINEERING CORPORATION, E. ROY FITZGERALD,
FOSTER G. BEAMSLEY, H. C. GROSSMAN, HENRY C. JUDD, L. R.
JACKSON, B. F. STRADLEY, A. M. HUGHES, DEFENDANTS

OPINION

APPEARANCES

For the Government: Tom C. Clark, Attorney General of the
United States; Wendell Berge, Assistant Attorney General;
William C. Dixon; Special Assistant to the Attorney Gen-
eral; Robert L. Rubin, Special Assistant to the Attorney
General; James E. Kilday, Special Assistant to the Attor-
ney General; Jesse R. O'Malley, Special Attorney; Leonard M.
Bessman, Special Attorney; James M. Carter, United States
Attorney.

For the Defendants: National City Lines, Inc., American City
Lines, Inc., Hodges, Reavis, Pantaleoni & Downey, New York;
Pacific City Lines, Inc., E. Roy Fitzgerald, Foster G. Beamsley;
O'Melveny & Myers, Louis W. Myers, Pierce Works, Jackson W.
Chance, Los Angeles, California. Firestone Tire & Rubber Com-
pany and L. R. Jackson, Joseph Thomas, Akron, Ohio; Haight,
Trippet, Syvertson, Oscar A. Trippet, Frank B. Yoakum, Sr., Los
Angeles, California. General Motors, Cosgrove, Clayton, Cramer
& Diether, T. B. Cosgrove, Leonard A. Diether, Los Angeles, Cali-
fornia. Phillips Petroleum Company, Finlayson, Bennett & Mor-
row, H. T. Morrow, Los Angeles, California. Mack Manufatur-
ing Corporation, Wright & Millikan, Charles E. Millikan, Los
Angeles, California, Standard Oil Corporation of California,

Lawler, Felix & Hall, John M. Hall. Federal Engineering Corporation, Henry C. Judd, Los Angeles, California.

133 YANKWICH, District Judge:

The defendants, indicted for violation of the Sherman anti-trust law, have moved to transfer the proceeding to another district under a provision of the Federal Criminal Rules of Procedure, which reads:

"The court upon motion of the defendant shall transfer the proceeding as to him to another district or division, if it appears from the indictment or information or from a bill of particulars that the offense was committed in more than one district or division and if the court is satisfied that in the interest of justice the proceeding should be transferred to another district or division in which the commission of the offense is charged."¹

I

THE PRACTICE WHICH LED TO THE CHANGE

This provision is an innovation in federal criminal procedure. Up to the time of its enactment, when an offense was committed in more than one district, the Government had the choice of the district for prosecution.

The Constitution provides that the trial of a criminal offense shall be held in the state where the offense was committed.² The Bill of Rights guarantees trial in the state and district wherein the crime was committed.³ Under the Constitution, the Congress is given the right to designate the actual place of trial when the offense is so committed within any state.⁴ Because, under the conspiracy statute,⁵ a conspiracy can be prosecuted in any state or district in which an overt act is committed, the practice developed of choosing a preferred district. The choice was that of the Government. And, although the courts, at times, pointed out the unfairness of the procedure, the defendant was helpless in the matter. Well might the Supreme Court thunder, as 134 it did in a well-known case against the injustice of taking a California resident to be tried in the District of Columbia for conspiracy. But the practice continued. The words of Mr. Justice Brown ring true even today:

"But we do not wish to be understood as approving the practice of indicting citizens of distant States in the courts of this District, where an indictment will lie in the State of the domicile of such

¹ Sec. 21 (b) Federal Rules of Criminal Procedure.

² United States Constitution, Article III, Section 2, Clause 3.

³ Sixth Amendment, Constitution of the United States.

⁴ Constitution of the United States, Article III, Sec. 2, Clause 3.

⁵ 18 U. S. C. A. 88.

person, unless in exceptional cases where the circumstances seem to demand that this course shall be taken. To require a citizen to undertake a long journey across the continent to face his accusers, and to incur the expense of taking his witnesses, and of employing counsel in a distant city, involves a serious hardship to which he ought not to be subjected, if the case can be tried in a court of his own jurisdiction."⁶

It was this practice, known to many of the members of the Advisory Committee, some of which had been in Government service, which resulted in the adoption of this provision of the rules. Judge Learned Hand of the Second Circuit, during the proceedings of the Institute conducted before the New York University School of Law, in introducing a former Assistant Attorney General of the United States, who had been a member of the Advisory Committee, injected these witty remarks about the proclivity of prosecuting everything in the federal courts by conspiracy indictment:

"Before he begins * * * they used to speak of indictments when I was a district judge as if indictments were a sacred mystery. Everything was prosecuted by conspiracy. In the Federal courts, as you know, there are practically no other crimes than the use of mails to defraud and that is a conspiracy. You never found what the conspiracy—that was part of the conspiracy—God himself never knew."⁷

And before the same Institute, the late Judge George Z. Meda-
lie of the Court of Appeals of New York, who had been United States Attorney for the Southern District of New York, and was also a member of the Advisory Committee, stated in very forceful language, the injustice of the rule which permitted the Government to hail defendants in a conspiracy case before tribunals far removed from the place of their residence where the conspiracy, if any existed, was hatched:

"Think of what else we have done. It is really a scandal in the Federal Administration, the frequent robbing of the Southern District of New York of its rightful jurisdiction. All large scale financial or business crimes are committed in the Southern District of New York, and they ought to be tried elsewhere; and I feel as you would have with me, if you had preceded me in office—you take these anti-trust cases and other cases involving business operations where indictments are found by the government—a man is blissfully attending to his business in Chicago, committing this, that or the other crime, or doing this that or the other good deed, depending on his outlook; and ne

⁶ Hyde v. Shine, 1905, 199 U. S. 62, 78.

⁷ Federal Rules of Criminal Procedure, New York Institute, 1946, page 160.

finds he must go down somewhere in New Mexico, because since his business is nation-wide, you can pick out any jurisdiction in the country and indict him there.

"Now that is pretty shabby business for the great government of the United States to indulge in. It ought not to be done. So we have another change of venue rule, that if it appears from the indictment or the bill of particulars that the crime has been committed or claimed to have been committed in more than one district, the judge in the district where the indictment has been found can order—and I am sure judges are fair and are not looking for these extra jobs—the trial in the district where it is most convenient that the case be tried.

"If, for example, a business headquarters are in Chicago, everybody is there, every book and record is there, practically every witness is there on both sides, then try it in Chicago. That is the decent thing to do and accords better with the dignity of our great government that it be done that way, rather than the shabby devices indulged in where we lose our status and our self respect. Government attorneys cannot, if they appraise themselves properly, afford to engage in that kind of thing; and perhaps it will diminish the abuse, if in fact, it doesn't succeed in its complete abolition".⁸ [Italics added.]

Others, who like Judge Medalie, had also been in the Government service, have expressed themselves as forcefully.⁹ One of the members of the Advisory Committee has made the charge that the practice makes it possible

"for the Government to shop around for an unduly favorable locality and judge".¹⁰

136 Judge Alexander Holtzoff, who was the Secretary of the Committee, in his most recent commentary on the rules has said about this rule that

*It creates a certain degree of equality between prosecution and defense in the choice of place of trial".*¹¹ [Italics added.]

⁸ Federal Rules of Criminal Procedure, New York Institute, 1943, pp. 274-275.

⁹ See the Remarks of G. Aaron Youngquist, another member of the Advisory Committee, and a former Assistant Attorney General, in Federal Rules of Criminal Procedure, New York Institute, 1946, pp. 169-170. Wendell Berge, former head of the Anti-trust Division of the Department of Justice, considered this change a "desirable" one. See, Wendell Berge, The Proposed Federal Rules of Criminal Procedure, 42 Michigan Law Review, 1943, pp. 353, 378-379. For other comments, see Robert F. McGuire, Proposed New Federal Rules of Criminal Procedure, 1943, 23 Oregon Law Review, 65, 66; Judge Alexander Holtzoff, Reform of Federal Criminal Procedure, 1944, 3 Federal Rules Decisions, 445, 452.

¹⁰ Professor George H. Deason, New Federal Rules of Criminal Procedure, 1947, 56 Yale Law Journal, pp. 197, 225. Another writer on the subject has made the accusation that the Government in selecting the place for indictment in certain well-known cases, such as United States v. Socony Vacuum Company, 1940, 310 U. S. 150; United States v. Safeway Stores, 1943, D. C. Kan., 51 Fed. Sup. 448; Frankfort Distilleries v. United States, 1944, 10 Cir., 144 F(2) 824, chose

"a tribunal foreign to the defendants who happen to be people of influence. It was calculated by the Government officials in those cases that the defendants would be at a disadvantage in the district chosen for trial." (Wm. Scott Stewart, Federal Rules of Criminal Procedure, 1945, p. 190.)

¹¹ See, Holtzoff, Federal Criminal Procedure, 37 Journal of Criminal Law and Criminology, 1946, pp. 109, 116.

In my own commentary on the new rules, I stressed the importance of this departure and pointed to the hardships, inconvenience and injustice resulting, at times, from the present practice.¹²

As the new rule is the sole authority for removal from one district to another,¹³ its scope must be determined from its language and the considerations which led to its enactment. In lodging the discretion in the trial judge, the Committee gave wide latitude to its exercise by stating that the transfer "shall be" granted when the judge is satisfied it is "in the interest of justice."¹⁴ There is thus an element of obligatoriness in the provision ("shall") once a satisfactory showing is made. And the showing is subordinated to the condition that it convince the judge that the transfer is "in the interest of justice."

II

WHAT IS "IN THE INTEREST OF JUSTICE?"

The phrase "in the interest of justice," like the analogous one which occurs often in statutory enactments—"in the furtherance of justice," has a broad meaning. It implies conditions which assist, or are in aid of or in the furtherance of, justice. Both call for the doing of things which bring about the type of justice which results when law is correctly applied and administered. They import the exercise of discretion which considers both the interests of the defendant and those of society. When commanded by a statute, they do not attempt to determine, in advance, the type of judicial action to be taken.¹⁵ As said by the Supreme Court in a well-known case:

"The term 'discretion' denotes the absence of a hard and fast rule.

The *Styria v. Morgan*, 186 U. S. 1, 9. When invoked as a guide to judicial action it means a sound discretion, that is to say, a discretion exercised not arbitrarily or wilfully, but with a regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to just result".¹⁶

So it is quite evident that, in each case, we are called upon to determine whether, under the particular circumstances of the case, a transfer would be in the interest of justice. The abuses which led to the adoption of the rule give us criteria by which to determine whether the discretion should or should not be exercised in a particular case. In my own commentary, I used the

¹² Yankwich, *The New Federal Rules of Criminal Procedure*, 1946, pp. 159, 192.

¹³ See, *Semel v. United States*, 1946, 5 Cir., 158 F. (2) 229, 231.

¹⁴ Rule 21 (b) *Federal Rules of Criminal Procedure*.

¹⁵ *Wells Fargo & Co. v. McCarthy*, 1907, 5 C. A. 301, 318; *People v. Disperati*, 1909, 11 C. A. 469, 476.

¹⁶ *Langnes v. Green*, 1931, 282 U. S. 531, 541; see, Yankwich, *Increasing Judicial Discretion in Criminal Proceedings*, 1941, 1 F. R. D. 746.

terms "hardship" and "inconvenience".¹⁷ We are not without judicial sanction for taking these two factors into consideration. Courts have held that the indictment of a person away from his domicile which requires him to (1') go to a distant place, (2') to employ counsel in a distant city and (3') to bring his witnesses from afar are hardships to be considered.¹⁸ So is also, in the case of a corporate body, the fact that (4') its business headquarters are in another city, and (5') its records are there.¹⁹

There is also what Judge Medallie has called (6') "the robbing" of another district "of its rightful jurisdiction."

These considerations apply whether the defendant be poor or rich, a small or large corporation. Neither the rules nor our system would justify the elimination of any of these elements merely because the defendants, or some of them, may be persons of great wealth or corporations with large resources.

The new rules give as their purpose "to provide for the just determination of every criminal proceeding." And we are enjoined to construe the rules "to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."²⁰

138 So in this rule, also, we have an indication as to some of the elements—(7') fairness and (8') elimination of unjustifiable expense—to be considered in determining the meaning of the phrase "in the interest of justice." And the Supreme Court has recognized most of these elements—*fairness and the vexatiousness and oppressiveness of a trial away from the domicile of a defendant, whether he be an individual or a corporation*, as controlling in civil cases, the application of the doctrine of *forum non conveniens*, warranting a court in refusing to accept jurisdiction.

In a recent leading case on the subject,²¹ Mr. Justice Douglas wrote for the Court:

"We mention this phase of the matter to put the rule of *forum non conveniens* in proper perspective. It was designed as an 'instrument of justice.' Maintenance of a suit away from the domicile of the defendant—whether he be a corporation or an individual—might be *vexatious or oppressive*. An adventitious circumstance might land a case in one court when *in fairness* it should be tried in another." [Italics added.]

¹⁷ Yankwich, *The New Federal Rules of Criminal Procedure*, 1946, pp. 159, 192.

¹⁸ *Hyde v. Shine*, 1905, 199 U. S. 62, 78; In *Kiley v. Meckler*, 1928, 57 N. D. 217, 220 N. W. 926, 928, the Court, in interpreting a state statute, allowing a change of venue, when (among other things) "the ends of justice would be prompted by the change," says:

"There is nothing to show promotion 'of the ends of justice,' when practically all the witnesses live in Burleigh County and one other is adjacent to Burleigh County."

¹⁹ See *Rev.* of Judge Medallie already quoted and to be found in *Federal Rules of Criminal Procedure*, New York Institute, p. 275.

²⁰ Rule 2, *Federal Rules of Criminal Procedure*.

²¹ *Williams v. Green Bay & W. R. Ry. Co.*, 1946, 326 U. S. 550, 555.

III

THE FACTS BEHIND THE MOTION

Because of the newness of the provision for transfer, there was need for clearing the ground legally before considering the facts upon which the motion is based.

The motion made by the nonresident defendants in the case and joined in by Standard Oil Company of California, Federal Engineering Corporation and Henry C. Judd, seeks to transfer the proceeding to the United States District Court for the Northern District of Illinois, Eastern Division.

On April 9, 1947, the Grand Jury of this District returned an indictment against a group of corporations and individuals, charging two counts of violation of the Sherman antitrust law.²² The indictment gives the States of the organization and the principal place of business of the corporations as follows:

139	Corporation	State of organization	Principal place of business
	National City Lines, Inc.	Delaware	Chicago.
	American City Lines, Inc.	Delaware	Chicago.
	Pacific City Lines, Inc.	Delaware	Oakland.
	Standard Oil Company of California	Delaware	San Francisco.
	Federal Engineering Corp.	California	San Francisco.
	Phillips Petroleum Company	Delaware	Bartlesville, Oklahoma.
	General Motors Corporation	Delaware	Detroit, Mich.
	Firestone Tire & Rubber Co.	Ohio	Akron, Ohio.
	Mack Manufacturing Corp.	Delaware	New York.

The individual defendants, with their address and the concern with which they are associated are thus given in the indictment:

Defendant	Address	Defendant corporation with which associated
E. Roy Fitzgerald, President and Director.	Chicago, Ill.	National.
Foster G. Beamsley, Vice Pres. and Director.	Chicago, Ill.	National.
H. C. Grossman, Asst. Secretary	Detroit, Mich.	General Motors.
Henry C. Judd, Treasurer	San Francisco	Standard and Federal.
L. R. Jackson, Vice President.	Akron, Ohio	Firestone.
B. F. Stradley, Secretary-Treasurer	Bartlesville, Okla.	Phillips.
A. M. Hughes, Vice President and Director	Bartlesville, Okla.	Phillips.

The conspiracy charged in Count I of the Indictment is a conspiracy to acquire and monopolize transportation systems by the three transportation companies, National, American and Pacific, through the control of operating companies in a large number of cities, among them Baltimore, Maryland; Tampa, Florida; Mobile, Montgomery, Alabama; Beaumont, Port Arthur, El Paso, Texas; Aurora, Elgin, Bloomington, Normal,

²² 15 U. S. C. A., Secs. 1, 2.

Champaign, Urbana, Danville, Decatur, East St. Louis, Joliet, Quincy, Illinois; Terre Haute, Indiana; Jackson, Kalamazoo, Pontiac, Saginaw, Michigan; Canton, Portsmouth, Ohio; Burlington, Cedar Rapids, Ottumwa, Iowa; Tulsa, Oklahoma; Lincoln, Nebraska; St. Louis, Missouri; Jackson, Mississippi; Salt Lake, Utah; Everett, Spokane, Washington; Sacramento, Eureka, Fresno, Glendale, Pasadena, San Jose, Stockton, Los Angeles, Oakland, and Long Beach, California.

The manner of so doing and the position of the other companies, known as "supply companies" in the conspiracy, is stated in Count I of the Indictment in this manner:

"knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy to acquire or otherwise secure control of or acquire a substantial financial interest in a substantial part of the companies which provide local transportation service in the various cities, towns, and counties of the several states of the United States, and to eliminate and exclude all competition in the sale of motorbusses, petroleum products, tires, and tubes to the local transportation companies owned or controlled by or in which National, American, or Pacific had a substantial financial interest, and to local transportation companies in which said companies acquired or, in the future, acquire ownership, control, or a substantial financial interest."

Towards this end certain of the defendants are charged with supplying money to the three transportation companies, to enable them to acquire control of these systems and, in return, entering into exclusive agreements to supply exclusively to the subsidiary operating companies certain equipment, petroleum products, and other supplies and to eliminate other suppliers from the field.

Count II alleges substantially the same facts, but charges a violation of Section 2 of the Act. The nature of the violation is stated to be:

"to monopolize part of the interstate trade and commerce of the United States, to wit, that part consisting of the sale of motorbusses, petroleum products, tires, and tubes used by local transportation systems in those cities, towns, and counties in which defendants National, American, and Pacific owned, controlled, or had a substantial financial interest in, or acquired, or in the future, acquire ownership, control, or a substantial financial interest in, said local transportation systems."

141 It is quite apparent from the indictment that "the head and front of the offending" is National City Lines, Inc., and its subsidiaries American City Lines, Inc., and Pacific City Lines, Inc., and especially National, which owns and controls the two others. National has its main place of business in Chicago, Illi-

nois. All its records are located there. Two of its principal officers, whose legal residence is Chicago, have been indicted. Its thirty-four operating subsidiaries, which operate transportation systems in various cities, are operated and controlled from Chicago. The transactions, which form the basis of the two counts of the indictment, took place chiefly in Chicago. The agreements with the other defendants, which the Government charges had the unlawful monopolistic effect and which are the gist of the offense, were negotiated in Chicago over a long period of years. The trial of the action—as appears from the affidavits of one of the defendants, E. Roy Fitzgerald, filed on his behalf and on behalf of his codefendant, Foster G. Beamsley—would require the attendance over a period of months of some of its keymen, including the two defendants named. This would result in a complete dislocation of its business at the place where it can least afford it—at the central place of control. The same conditions exist as to the other non-resident defendants, the suppliers, such as Firestone, General Motors, Mack, and Phillips—that is, location of its chief business outside of the Southern District of California, nonresidence of executive officers and men in managerial positions who are needed as witnesses, books, and records kept outside the district, agreements entered into without the district and greater proximity to Chicago, Illinois, than to Los Angeles, California.

Standard Oil Company of California, Federal Engineering Corporation, and Henry C. Judd feel that, although their main place of business is California,

“It is essential for the protection of Standard and Federal, as well as all other defendants, that the case be tried at a location where the evidence to refute this conspiracy *may be produced with the least diminution or impairment*. Mr. Fitzgerald’s affidavit shows that such location is Chicago.” [Italics theirs.]

It is true, as the Government’s affidavit asserts, that these companies, excepting Phillips, conduct certain operations in the State. That is, however, unimportant. The question to determine is whether, under the facts in the case, transfer is called for “in the interest of justice.” And this can only be determined by considering the facts just alluded to in the light of the principles discussed in the first two portions of this opinion.

142 The facts, in the main, are undisputed. In truth, the Government, at first, did not deny the affidavit filed on behalf of National. Realizing, at the oral argument, that they may have treated the matter lightly, the Government sought and obtained leave to file a counteraffidavit. This counteraffidavit does not, on the whole, deny the facts relating to National and to the other nonresident defendants. In substance, it asserts that many of the Government witnesses are local and that, in the presen-

tation of its case before the Grand Jury, it used many documents which were supplied locally. Granted that this is so, how can it be assumed, in the face of sworn statements to the contrary, that documentary and other proof to be presented by the defendants is available locally?

The factual situation which the Government presents to a grand jury is, of necessity, one-sided. Of the essence of the crime charged is criminal intent. Even the fairest presentation of a prosecutor's case may not show the real motivation of the acts being investigated. In this connection, I refer to the words of a great judge:²³

"I am aware of course that the word intent as vaguely used in ordinary legal discussion means no more than knowledge at the time of the act that the consequences said to be intended will ensue. Even less than that will satisfy the general principle of civil and criminal liability. A man may have to pay damages, may be sent to prison, at common law might be hanged, if at the time of his act he knew facts from which common experience showed that the consequences would follow, whether he individually could foresee them or not. But, when words are used exactly, a deed is not done with intent to produce a consequence unless that consequence is the aim of the deed. It may be obvious, and obvious to the actor, that the consequence will follow, and he may be liable for it even if he regrets it, but he does not do the act with intent to produce it unless the aim to produce it is the proximate motive of the specific act, although there may be some deeper motive behind."

Acts and contemporaneous declarations of defendants, unrevealed by the Government's documentation, may change entirely the complexion of the case. And the Government is not in a position to say that it has in its possession and can produce through

witnesses and documentary evidence locally available all the facts bearing on the intent of the defendants. So that even if we assume that the Government does not need and will not produce outside witnesses or documents located outside of California, this does not contradict the sworn statements of the officers of the defendant companies that their defense will be grounded on the testimony of witnesses who will have to be taken away from their head offices and on documentary evidence and company records which will have to be transported to this district. Firestone alone estimates that sixteen of its officers, executives, or members of its managerial staff, residents of Akron and Chicago, may be needed as witnesses in the case.

²³ Holmes, J., in his dissent in *Abrams v. United States*, 1919, 250 U. S. 616, 626-627.

The Government's affidavit lays much stress on the fact that the local operating subsidiary enjoys a measure of local control and that the largest restraint in the free flow of products resulted from the acquisition of the local transportation system. The emphasis placed on the size of the Los Angeles transaction in the Government's affidavit and at the oral argument does not conform to the pattern of the indictment.

Counsel for the Government seem to think that because the transportation system acquired in Los Angeles is the largest controlled by the system, venue is properly laid here. They insist that such acquisition was—as they put it at the oral argument—"the flowering of the conspiracy." But none of the operating subsidiaries in California, in or out of Los Angeles County, have been indicted. Nor are they designated as coconspirators, as is sometimes done in cases of this character when the Government chooses to prosecute certain of the conspirators only. They are merely vehicles through which the channeling of petroleum products, tires, and other equipment was achieved. The agreements by which this was accomplished were engineered by the defendants outside the district. Although one overt act is alleged to have occurred in the district, in a prosecution of this character, an overt act is not necessary.²⁴ The agreement is the essence of the offense.²⁵ And the proof of that agreement lies in the actions of the controlling companies—National and the large suppliers—who are charged to have agreed and conspired with them.

The location of the operating companies to whom the products were supplied, as a result of this agreement, has nothing to do with the offense. Were the Government seeking—through a suit in equity—to divest any of the defendant companies of their subsidiaries or to put an end to illegal agreements, the location of the business of the operating subsidiaries might have some bearing on venue. Even then facts such as exist here would warrant the court in declining to take jurisdiction.²⁶ But in a case like the present one, a prosecution for criminal conspiracy to restrain and monopolize commerce, the location of the operating companies has no bearing whatsoever on the question of forum.

Under the circumstances, I feel that the defendants have shown that the eight elements which, in the first portion of this opinion

²⁴ *Nash v. United States*, 1913, 229 U. S. 373, 378; *United States v. Socony-Vacuum Oil Co.*, 1940, 310 U. S. 150, 224-225; *United States v. New York Great Atlantic etc. Co.*, 1943, 5 Cir., 137 F. (2) 459, 464.

²⁵ *United States v. Trenton Potteries*, 1926, 273 U. S. 392, 402; *United States v. Socony-Vacuum Oil Co.*, 1940, 310 U. S. 150, 252; *United States v. General Motors Corp.*, 1941, 7 Cir., 121 F. (2) 376, 404-405.

²⁶ *Rogers v. Guaranty Trust Co.*, 1932, 288 U. S. 123, 130-131; *Williams v. Green Bay & W. R. Ry. Co.*, 1946, 326 U. S. 550, 555; *Koster v. Lumbermen's Mutual Casualty Co.*, 1947, 91 Law Ed. 764; *Gulf Oil Co. v. Gilbert*, 1947, 91 Law Ed. 755, 759.

I indicated to be the criteria for determining whether a requested transfer would be in the interest of justice, exist in this case.

We have here a prosecution which would compel the chief defendants (1') to go to a place distant from the location of their business; (2') to employ or bring counsel to a distant city; (3') to bring witnesses from afar; (4') their business headquarters are in another city; (5') most of the records which relate to the transaction on which the indictment is based are there. Under the circumstances, (7') fairness would be absent and (8') the defendants would be put to unjustifiable expense, if we deprived the United States District Court for the Northern District of Illinois, Eastern Division (6') "of its rightful jurisdiction."

I do not question the motive of the Government in instituting the prosecution in this district.

But I am satisfied that a trial here would impose unnecessary hardships on the defendants and entail unjustifiable expense which it is the object of the new rules of criminal procedure, and especially of the rule under discussion, to avoid. Altogether the facts spell out the vexatiousness and oppressiveness which the Supreme Court has warned us to eschew in matters of this character.²⁷

The motion of the defendants to transfer the cause to the Northern District of Illinois, Eastern Division, is, therefore, granted.

Dated this 14th day of August 1947.

LEON R. YANKWICH,
U. S. District Judge.

145

Exhibit "C" to affidavit

In the District Court of the United States, Southern
District of California, Central Division

No. 19270-Cr.

Honorable LEON R. YANKWICH, Judge

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANTS

ORDER ON MOTIONS

The various motions of the defendants heretofore argued and submitted are now decided as follows:

²⁷ See cases cited in Note 26 and the language of Mr. Justice Douglas already quoted from *Williams v. Green Bay & W. B. Ry. Co.*, 1946, 326 U. S. 550, 555.

(1) The motions of the defendants made under Rule 21 (b) of the Federal Rules of Criminal Procedure to transfer the above proceeding to the United States District Court for the Northern District of Illinois, Eastern Division, is granted and the said cause is hereby transferred to said court for all further proceedings. The Clerk of this court is ordered to transmit to the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, all papers in the proceeding as required by Subdivision (c) of Rule 21.

The Court files herewith an opinion setting forth the grounds for this ruling and now states that the Court is satisfied that, in the interest of justice, the proceeding should be transferred to the above-named district and that prosecution should continue therein.

(2) The Order heretofore entered on the 15th day of July 1947, submitting the motion of the defendant American City Lines, Inc., to dismiss the indictment as to it is vacated and 146 the said motion is referred to the United States District Court for the Northern District of Illinois, Eastern Division for action thereon.

(3) The Order heretofore entered on the 15th day of July 1947, submitting the motions of all the defendants for bills of particulars is now vacated and said motions are referred to the United States District Court for the Northern District of Illinois, Eastern Division, for action thereon.

Having reached the conclusion that the cause should be transferred to another district, I should not bind such court by any ruling on these motions, but leave to the court which will try the case complete freedom of action.

As indicated at the time of oral argument, while the motion to dismiss presents a question of law, the point made is not so clearly established as to avoid the possibility of judges placing different interpretations upon the Delaware statute relating to survival of actions. And, as to the bill of particulars, the granting of a bill of particulars is purely discretionary. Judges may differ as to the scope of such bill. Therefore, the judge who will try the case is in the best position to determine whether a bill of particulars should be granted, and if so, as to what matters.

Dated this 14th day of August 1947.

LEON R. YANKWICH,
U. S. District Judge.

147* In the District Court of the United States, Southern District
of California, Central Division

Civil Action No. 6747-Y

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANTS

[File endorsement omitted.]

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA;

County of Los Angeles, ss:

Harley Walther, being first duly sworn, deposes and says:

Affiant is and was, at all times herein mentioned, a citizen of the United States and a resident of the State of California, County of Los Angeles, over the age of twenty-one (21) years, and not a party to or interested in the above action; affiant's business address is 900 Title Insurance Building, 433 South Spring Street, Los Angeles 13, California.

On August 27, 1947, affiant served the Amendment and Supplement to Motion to Dismiss of defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., noticed for hearing September 15, 1947, and Affidavit of Jackson W.

148 Chance in support thereof upon each counsel named below by depositing true copies thereof in a United States mail

box at Los Angeles, California, in sealed envelopes with postage thereon fully prepaid and addressed as indicated below: William C. Dixon, Jesse R. O'Malley, Robert J. Rabin, and Leonard M. Bessman, Antitrust Division, Department of Justice, 1602 U. S. Postoffice & Courthouse, Los Angeles 12, California. Lawler, Felix & Hall, Felix T. Smith, and John M. Hall, 800 Standard Oil Building, Los Angeles 15, California. Henry M. Hogan, Cosgrove, Clayton, Cramer & Diether, T. B. Cosgrove, and Leonard A. Diether, 1031 Rowan Building, Los Angeles 13, California. Finlayson, Bennett & Morrow and H. T. Morrow, 837 Van Nuys Building, 210 West 7th Street, Los Angeles 14, California.

149 Haight, Trippet & Syvertson and Oscar A. Trippet, 1140 Rowan Building, 458 South Spring Street, Los Angeles 13, California. Wright and Millikan and Charles E. Millikan, 1125 111 West 7th Building, Los Angeles 14, California.

The addresses indicated are the last known addresses of each of said counsel and there is regular communication by mail between the place of mailing and the place so addressed.

Harley Walther.

HARLEY WALTHER.

Subscribed and sworn to before me, this 28th day of August 1947.

[NOTARIAL SEAL]

RUBY E. SLOANAKER,

Notary Public in and for said County and State.

150 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Amendment and supplement to notice of motion to dismiss filed by Defendant Phillips Petroleum Company.

Filed Aug: 29, 1947

Defendant Phillips Petroleum Company hereby amends and supplements its Notice of Motion to Dismiss heretofore filed herein, and its Proposed Motion to Dismiss noticed and set for hearing on September 15, 1947, by adding thereto, as a further ground of the said motion to dismiss, the following additional ground, as follows:

That the above-entitled court did on August 14, 1947, make and enter an Order in that certain proceeding then pending in said Court and being entitled "United States of America v. National City Lines, Inc., et al., Defendants," being Criminal No. 19270 in the files of said Court, transferring said proceeding to the United States District Court for the Northern District of Illinois, Eastern Division (Chicago); that the transactions upon which the indictment was returned in said No. 19270 are identical with the transactions set forth and alleged in the Complaint on file in the above-entitled suit; and that it is not in the interests of justice that this defendant be required to defend this equity
151 suit at Los Angeles, California, when the Criminal proceedings involving the same transactions has been transferred to and is now pending in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

Said amendment and supplement is and will be passed upon the Complaint herein, upon said Notice of Motion, the Motion therein

noticed, upon the Indictment in the above mentioned criminal action, upon all documents mentioned in this defendant's said Notice of Motion, upon the affidavit of Jackson Chance and all other memoranda and documents filed herein on behalf of defendant National, and the documents in said affidavit incorporated by reference, and upon the Opinion and Order of the Court, copies of which are attached to the defendant National's Amendment and Supplement to its Motion to Dismiss filed herein; all of which, to avoid repetition, and for the Court's convenience, being hereby adopted and relied upon as though attached hereto.

Dated at Los Angeles, California, August 27th, 1947.

H. T. MORROW and
FINLAYSON, BENNETT & MORROW,
By H. T. MORROW,
*Attorneys for defendant Phillips
Petroleum Company.*

It is ordered that the Notice of Motion to Dismiss of Phillips Petroleum Company heretofore filed in the above entitled action and the proposed motion therein noticed for hearing on September 15, 1947, may be amended and supplemented as set forth above.

Dated at Los Angeles, California, August 29, 1947.

LEON R. YANKWICH,
United States District Judge.

Received copy of the within this 29th day of August 1947.

LEONARD BESSMAN,
Attorney for Pl.

152 In the District Court of the United States for the Southern
District of California, Central Division

Civil No. 6747-Y

[File endorsement omitted.]

[Title omitted.]

*Notice of amendment and supplement to motion to dismiss by
Firestone Tire & Rubber Company*

Filed Aug. 29, 1947

To Plaintiff and Its Attorneys:

Defendant The Firestone Tire & Rubber Company hereby amends and supplements its Motion to Dismiss heretofore filed and

noticed for hearing on September 15, 1947, by adding a further ground of said motion as follows:

The above-entitled court did on August 14, 1947, make and enter an order in that certain proceeding then pending in said court entitled "United States of America v. National City Lines, Inc., et al., Defendants," being Criminal No. 19270 in the files of said court, transferring said proceeding to the United States District Court for the Northern District of Illinois, Eastern Division (Chicago); that the transactions upon which the indictment was returned in said Case No. 19270 are identical with transactions set forth and alleged in the complaint on file herein, and that 153 it is not in the interests of justice that defendant be required to defend this equity suit at Los Angeles, California, when the criminal proceeding involving the same transactions has been transferred to and is now pending in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

This amendment and supplement to defendant's Motion to Dismiss is based upon the complaint on file herein, upon said Notice of Motion to Dismiss, upon this Notice of Amendment and Supplement to said motion, upon the affidavit of E. Roy Fitzgerald, and upon the Memorandum of Points and Authorities of the defendant National City Lines, Inc. (which said affidavit and points and authorities have heretofore been filed herein), upon the affidavits of H. H. Hollinger and Joseph W. Thomas, hereafter to be filed herein, and upon the affidavit of Jackson W. Chance and the exhibits accompanying said affidavit, which affidavit is dated August 27, 1947, and is now on file in this cause and which is by reference incorporated herein.

Dated August 29, 1947.

JOSEPH THOMAS,
HAIGHT, TRIPPET & SYVERTSON,
By F. B. YOAKUM, Jr.,
Attorneys for Defendant,
The Firestone Tire & Rubber Company.

It is ordered that the Motion to Dismiss heretofore filed herein and noticed for hearing on September 15, 1947, may be amended and supplemented as above set forth.

Dated August 29, 1947.

LEON R. YANKWICH,
United States District Judge.

Received copy of the within this 29th day of Aug. 1947.

LEONARD BESSMAN,
Attorney for Plaintiff.

154 In the District Court of the United States, Southern District
of California, Central Division

[File endorsement omitted.]

[Title omitted.]

*Amendment and supplement to notice of motion by Mack Manu-
facturing Corporation to dismiss*

Filed Aug. 29, 1947

*To the United States of America, Plaintiff in the above-entitled
action, and to its attorneys of record:*

You are hereby notified that the motion of Mack Manu-
facturing Corporation to dismiss the complaint in the above-entitled
action, heretofore noticed for hearing for September 15, 1947,
by notice of motion dated the 7th day of August 1947, and here-
tofore served and filed, will be amended and supplemented by
adding to the grounds of said motion to dismiss (designated in
said notice of motion as Motion No. 1) the following additional
ground:

That the above-entitled Court did, on August 14, 1947, make
and enter an order in that certain proceeding then pending in
said Court and being entitled "United States of America v. Na-
tional City Lines, Inc., et al., Defendants," being
155 Criminal No. 19270 in the files of said Court, transferring
said proceeding to the United States District Court for
the Northern District of Illinois, Eastern Division (Chicago);
that the transactions upon which the indictment was returned in
said No. 19270 are identical with the transactions set forth and
alleged in the complaint on file in the above entitled suit; and
that it is not in the interests of justice that this defendant be re-
quired to defend this equity suit at Los Angeles, California, when
the criminal proceeding involving the same transactions has been
transferred to and is now pending in the United States District
Court for the Northern District of Illinois, Eastern Division
(Chicago).

The foregoing additional ground of said motion, and said
Motion No. 1 as amended by the inclusion of the foregoing
amendment and supplement, will be based upon the complaint on
file herein; upon said notice of motion dated the 7th day of August
1947; upon this notice; upon the affidavit of C. W. Haseltine and
the memorandum of points and authorities heretofore filed; upon
the affidavit of E. Roy Fitzgerald heretofore filed in the above
entitled proceeding in support of the motion of National City

Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., to dismiss complaint herein; and upon the affidavit of Jackson W. Chance and the exhibits attached thereto, filed in the above-entitled proceeding in support of amendment and supplement to motion to dismiss filed on behalf of said defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc.

Dated August 28, 1947.

WRIGHT AND MILLIKAN,
LOYD WRIGHT,
Charles E. Millikan,
By CHARLES E. MILLIKAN,
Attorneys for defendant
Mack Manufacturing Corporation.

156 It is ordered that the foregoing and within amendment and supplement to notice may be filed.

LEON R. YANKWICH,
United States District Judge.

Received copy of the within Amendment this 29 day of August, 1947.

W. C. DIXON,
Attorney for U. S.

157 In the District Court of the United States for the Southern District of California, Central Division

Civil Action No. 6747-Y

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., DEFENDANTS

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,

County of Los Angeles, ss:

Mavine S. Basinger, being first duly sworn, deposes and says: That she is a citizen of the United States and a resident of Los Angeles County, California; that her business address is 1031 Rowan Building, 458 South Spring Street, Los Angeles, California; that she is over the age of eighteen years, and is not a party to the above-entitled action;

That on September 2, 1947, she deposited in the United States Mails at Los Angeles, in an envelope bearing the requisite postage, a copy of "Joinder of Defendant, General Motors Corporation in

Amended and Supplemental Motion to Dismiss" addressed
 158 to: William C. Dixon, Esq.; Jackson W. Chance, Esq.,
 O'Melveny & Myers, Oscar Trippet, Esq., Haight, Trippet
 & Syvertson; Hubert T. Morrow, Esq., Bennett, Finlayson & Mor-
 row; Charles E. Millikan, Esq., Wright & Millikan; John M. Hall,
 Esq., Lawler, Felix & Hall, at their last known address, at which
 place there is a delivery service by United States Mails.

MAXINE S. BASINGER.

Subscribed and sworn to before me this 2nd day of September
 1947.

ANNABEL SMITH,

*Notary Public in and for
 said County and State.*

159 In the District Court of the United States Southern
 District of California, Central Division

Civil Action No. 6747-Y

[File endorsement omitted.]

[Title omitted.]

*Joinder of Defendant, General Motors Corporation, in amended
 and Supplemental Motion to Dismiss of National City Lines,
 Inc.*

Filed Sept. 2, 1947

Defendant, General Motors Corporation, joins in the motion
 of National City Lines, Inc., American City Lines, Inc., Pacific
 City Lines, Inc., Firestone Tire and Rubber Company, and Mack
 Manufacturing Corporation, to dismiss the above-entitled action
 on the ground that this is not a convenient forum to try said ac-
 tion, and that the most convenient forum therefor is the United
 States District Court for the Northern District of Illinois, East-
 ern Division (Chicago).

Dated September 2nd, 1947.

HENRY M. HOGAN and

COSGROVE, CLAYTON, CRAMER & DIETHER,

T. B. COSGROVE,

LEONARD A. DIETHER,

By T. B. COSGROVE,

*Attorneys for the Defendant,
 General Motors Corporation.*

160 In the District Court of the United States for the Southern
District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

*Joinder of Defendants, Standard Oil Company of California and
Federal Engineering Corporation, in motion No. 1 filed by De-
fendants, National City Lines, Inc., American City Lines, Inc.,
and Pacific City Lines, Inc., as said motion No. 1 has now been
amended and supplemented.*

Filed Sept. 2, 1947

Defendants, Standard Oil Company of California and Federal
Engineering Corporation, joint in Motion No. 1 (motion to dis-
miss) filed herein by defendants, National City Lines, Inc., Amer-
ican City Lines, Inc., and Pacific City Lines, Inc., as said
161 Motion No. 1 has now been amended and supplemented.

Dated August 30, 1947.

LAWLER, FELIX & HALL,

FELIX T. SMITH,

John M. Hall,

By John M. Hall,

JOHN M. HALL,

Attorneys for defendants,

Standard Oil Company of California

and Federal Engineering Corporation.

Received copy of the within Joinder this 2d day of Sept. 1947.

W. C. DIXON,

H. S.

Attorney for U. S.

162 In the District Court of the United States for the Southern
District of California, Central Division

Civil Action No. 6747-Y

[File endorsement omitted.]

[Title omitted.]

*Affidavit of Jesse R. O'Malley in opposition to defendants' motion
to dismiss*

Filed Sept. 3, 1947

COUNTY OF LOS ANGELES,

State of California, ss:

Jesse R. O'Malley, being duly sworn, deposes and says:

That he is one of the counsel for the Government in the case of
United States v. National City Lines, Inc. et al., Civil No. 6747-Y,
in the Southern District of California, Central Division; that he
was connected with and participated in the investigation resulting
in the filing of said suit and is engaged in the preparation of said
case for trial and is personally familiar with the facts contained
in the averments and allegations herein made.

163 Affiant avers that a substantial number of the agreements
which the Government contemplates using in the trial of
said case were negotiated in the State of California; that the
evidence which the Government expects to introduce to prove the
allegations of the Complaint covers and relates to the activities
of the defendants Standard Oil Company of California, Federal
Engineering Corporation, General Motors Corporation, Fire-
stone Tire and Rubber Company, Pacific City Lines, Inc., and
subsidiaries thereof, in the West Coast area including the State
of California in particular; that this evidence will cover a period
of approximately nine years and that such evidence will also
cover the activities of the defendant National City Lines, Inc.
within the West Coast area including, among other activities, its
actions within the past three years which relate to the manner
and method whereby it secured control of defendant Pacific City
Lines, Inc., the Los Angeles Transit Lines, the Long Beach City
Lines, and the Key System which operates in the Oakland and
San Francisco Bay area in the State of California, as well as the
relations between such companies and the supplier defendants
named in the Complaint, exclusive of the defendant Phillips
Petroleum Company.

Affiant further avers that in proving the conspiracy charged in
the Complaint the Government expects to call a substantial

number of witnesses from the Pacific Coast area and states adjacent thereto, which testimony the Government expects will prove the existence and the effects of the conspiracy charged in the Complaint, as well as the connection of the various defendants therewith.

Affiant further avers that a large amount of documentary evidence will be subpoenaed by the Government from companies doing business in the Pacific Coast area, which evidence will form a substantial part of the proof which the Government expects to offer in support of the existence of the conspiracy itself as well as other allegations in the Complaint.

Affiant further avers that the Government expects to 164 subpoena numerous documents, books, and records on the trial of this case from operating subsidiaries of defendant National City Lines, Inc. located on the Pacific Coast and from the defendants Pacific City Lines, Inc. and subsidiaries thereof, Standard Oil Company of California, and Federal Engineering Corporation, which defendants have their principal offices within the State of California and carry on extensive business operations which relate to the restraints charged in the Complaint, all of which are within the jurisdiction of this Court.

Affiant further avers that all the supplier defendants except defendant Mack Manufacturing Corporation and defendant Phillips Petroleum Company are found and transact business on a large scale in the Southern District of California; that defendant Mack Manufacturing Corporation does business in Los Angeles, California, through a wholly owned subsidiary, Mack International Motor Truck Corporation; that W. Ralph Fitzgerald, Vice President and Operating Manager of National City Lines, Inc., lives in the City of Los Angeles and has offices here from which he supervises the operations of defendant National City Lines, Inc. on the Pacific Coast; that said W. Ralph Fitzgerald is one of the two officers of defendant National City Lines, Inc., in charge of the purchases of busses, tires, tubes, and petroleum products for the operating subsidiaries of defendant National City Lines, Inc., the purchase of which products is the subject of the restraints alleged in the Complaint; that the other officer in charge of the purchases allegedly restrained is E. Roy Fitzgerald of Chicago, Illinois, who is Chairman of the Board of Directors of Los Angeles Transit Lines; that Foster G. Beamsley, Vice President of defendant National City Lines, Inc., is also a director of the Los Angeles Transit Lines; that the Government contemplates introducing important and substantial evidence in the trial of the instant case in support of the principal allegations and charges made against the defendants in the Complaint, which evidence will relate to both

the manner and method whereby control was acquired of
165 Los Angeles Transit Lines by defendant American City
Lines, Inc., and the manner and the method whereby the
trade restraints described in the Complaint were thereafter im-
posed on said Los Angeles Transit Lines by the defendants; that
defendant Pacific City Lines, Inc., is a wholly owned subsidiary
of defendant National City Lines, Inc., and also carries on ex-
tensive business operations in the Southern District of California;
that said defendants Standard Oil Company of California, Gen-
eral Motors Corporation, and the Firestone Tire and Rubber Com-
pany, all have large plants and business offices in the Southern
District of California; that the only corporate defendant doing
no business whatever in any manner in the Southern District of
California is the Phillips Petroleum Company, whose headquar-
ters are in Bartlesville, Oklahoma.

Affiant further avers that the Government contemplates subpena-
ing documentary evidence from the defendant National City
Lines, Inc., on the trial of this case but that affiant is informed and
therefore avers that the the filing system of said defendant Na-
tional City Lines, Inc., is decentralized and that much of the docu-
mentary evidence to be produced by such defendant on the trial of
such case, pursuant to subpoena, will be found and obtained from
files of some of the subsidiaries of defendant National City Lines,
Inc., many of which are doing business within the jurisdiction of
this Court as before averred; that C. Frank Reavis of New York
City, Counsel and Director of National City Lines, Inc., is reported
to have made the following statement under oath before the Public
Service Commission of Maryland on September 14, 1944, with
reference to the twenty-eight operating companies which were then
under the control of National City Lines, Inc., in which he indi-
cated that many subsidiaries of National City Lines, Inc., were
locally operated: "I do not mean to say National City operates
them. Each subsidiary in its own city is responsible for its own
operations."

Affiant further avers that information submitted by defendant
National City Lines, Inc., disclosed that two groups of subsidiary
corporations are controlled by said defendant, i. e., those
166 primarily directed from Chicago and those directed prima-
rily by local management. Said information submitted by
said defendant referred to the consolidated total assets of "Chicago
operated companies" as totalling \$29,499,201.45. Affiant has rea-
son to believe and therefore avers that the assets of the Key System
operated companies" as totalling \$29,499,201.45. Affiant has rea-

of Oakland and the San Francisco Bay area as of September 30, 1946, totalled \$19,288,616.54; that the price paid for the securities of the Los Angeles Transit Lines by defendant National City Lines, Inc., or its controlled subsidiary American City Lines, Inc., was \$12,880,000; and that the total assets of the Key System and the Los Angeles Transit Lines, which operate in the Pacific Coast area and whose motorbus, tire, tube, and petroleum products business is subject to the restraints charged in the Indictment, is in excess of the total assets of all of the so-called "Chicago operated companies," and that evidence of the imposition of such restraints on said companies is part of the evidence which the Government expects to offer on the trial of the case to prove the conspiracy allegations of the Complaint.

Affiant further avers that the sale of busses, tires, tubes, and petroleum products, which is the subject of the trade restraints charged in the Complaint and concerning which the Government expects to introduce evidence on the trial of the within case, is far greater on the Pacific Coast than in any other area of the country in which the defendants conduct their operations. Affiant further avers that the defendant National City Lines, Inc., has also produced figures which indicated that during the first eight months of 1946 motorbuses purchased by the so-called "Chicago operated companies," and which were subject to the restraints alleged in the Complaint, totalled only \$769,681, whereas during the same eight months' period the Los Angeles

Transit Lines produced figures which indicated that during the same period its purchases of motorbuses totalled \$2,232,975.58, all of which evidence the Government expects to produce, together with other evidence, on the trial of the instant case in support of the allegations and charges made against all defendants named in the Complaint.

Dated Sept. 3, 1947.

Jesse R. O'Malley,

JESSE R. O'MALLEY,

Special Attorney,

United States Department of Justice.

Subscribed and sworn to before me this 3 day of September 1947

[SEAL]

CLARKE EDWIN STEPHENS,

*Notary Public in and for the County of
Los Angeles, State of California.*

In the District Court of the United States in and for the
Southern District of California, Central Division

No. Civil 6747-Y

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANT

AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES OF AMERICA,

Southern District of California, ss.:

Helen Sheridan, being first duly sworn, deposes and says:

That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (her) business address is 1602 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on September 3, 1947, (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Brief and Affidavit in Opposition to the Defendants' Motions for a Bill of Particulars and to Dismiss the above-entitled cause, addressed to Jackson W. Chance, O'Melveny & Myers; Oscar Trippet, Haight, Trippet & Syvertson; T. B. Cosgrove, Cosgrove, Clayton, Cramer & Diether; Herbert T. Morrow, Bennett, Filkayson & Morrow; Charles E. Millikan, Wright & Millikan; John M. Hall, Lawler, Felix & Hall, at their last known address, at which place there is a delivery service by United States Mails from said post office.

HELEN SHERIDAN.

Subscribed and sworn to before me, this day of Sept. 8, 1947.

EDMUND L. SMITH,
Clerk, U. S. District Court,
Southern District of California.

By EDW. L. DREW,
Deputy.

169 In the District Court of the United States for the Southern
District of California, Central Division

Civil Action No. 6747-Y

[File endorsement omitted.]

[Title omitted.]

*Affidavit of H. H. Hollinger in support of motion to dismiss on
ground of forum non conveniens, on behalf of the Firestone
Tire & Rubber Company*

Filed Sept. 11, 1947

COUNTY OF SUMMIT,

State of Ohio, ss.

H. H. Hollinger, being first duly sworn on oath, deposes and
says:

1. That he is Secretary of The Firestone Tire & Rubber Com-
pany, an Ohio corporation, one of the corporate defendants in
the above-captioned case; that on behalf of said Company he files
this affidavit in support of a motion to dismiss on the ground of
forum non conveniens.

2. That by the terms of the Complaint and otherwise it is
evident that the alleged offenses occurred principally in Chicago.

3. That the principal defendant National City Lines, Inc. has
its principal place of business in Chicago and that the operations
of the National system are directed from Chicago which is 2,000
miles removed from Los Angeles. Defendant General Motors
and defendant Firestone have their principal place of business in
Detroit, Michigan and Akron, Ohio respectively which said cities
are approximately 2,500 miles from Los Angeles. Defend-
170 ant Mack has its principal place of business in New York
which is approximately 3,000 miles from Los Angeles.
Defendant Phillips has its principal place of business in Bartles-
ville, Oklahoma, about 1,500 miles from Los Angeles. Defend-
ants Standard and Federal have their principal place of business
at San Francisco which is 400 miles removed from Los Angeles.

4. That none of the corporate defendants reside in or have
their principal places of business or general offices in the Southern
District of California, Central Division.

5. That he is advised that the trial of this case may last a number
of months; the attendance of L. R. Jackson, Executive Vice Presi-

dent of The Firestone Tire & Rubber Company, at a lengthy trial in Los Angeles would seriously interfere with the normal conduct of defendant Firestone's business and would cause great personnel inconvenience. If the trial is held in Chicago which can be reached by airplane from Akron within two hours, it would permit him to commute between these two cities and thus discharge his duties as Executive Vice President of the Company. Any witnesses employed by defendant Firestone who might be called on behalf of the government or the Company are located at Akron or at least in the midwestern states and if the trial is held in Chicago, it would be less injurious to the business operations of defendant Firestone than to require said witnesses to travel to Los Angeles.

6. That a companion criminal case involving the same parties and the same issues has heretofore been filed in this court as Criminal Action No. 19270 and by order of court entered August 14, 1947, said criminal action has been transferred to the Federal District Court at Chicago, Illinois. That to try the criminal case in Chicago and the civil case in Los Angeles would
171 cause great business hardship and inconvenience.

H. H. Hollinger.

H. H. HOLLINGER.

*Secretary, The Firestone Tire &
Rubber Company, Akron, Ohio.*

Subscribed and sworn to before me this 4th day of September 1947:

[SEAL]

Mabel Joynt,

MABEL JOYNT, *Notary Public.*

My Commission Expires June 5, 1950.

172 In the District Court of the United States for the
Southern District of California, Central Division

[Title omitted.]

*Affidavit of Joseph Thomas in Support of Motion to Dismiss on
Ground of Forum non Conveniens, on Behalf of the Firestone
Tire & Rubber Company*

COUNTY OF SUMMIT,

State of Ohio, ss:

Joseph Thomas, being duly sworn, deposes and says:

1. That defendant herein, The Firestone Tire & Rubber Company have joined in a motion to dismiss on the ground of forum non conveniens.

2. That as General Counsel for defendant The Firestone Tire & Rubber Company and on behalf of said Company, he files this affidavit in support of said motion.

3. That on August 14, 1947, this Court entered an Order transferring to the Federal District Court at Chicago, for trial, a companion criminal case under Rule 21 (b) of the Federal Rules of Criminal Procedure; said case involved the same defendants and, substantially the same allegations and issues, and is known as United States of America, plaintiff vs. National City Lines, Inc. et al. defendants, Criminal Action No. 19270.

4. That in response to a subpoena duces tecum served on the Company at Akron, Ohio on September 16, 1946, and at the

173 Company's General Counsel, he supplied from Akron, Ohio, a large number of papers to the Anti-trust Division of the United States Department of Justice at Los Angeles; that

said papers involving the relationship between Firestone and the National City Lines, Inc. et al., disclosed the names of sixteen members of the Firestone organization. All but one of these persons are residents of Akron or Chicago. Some of them are officers or executives of the Company, and the rest are important members of the managerial staff. It is entirely possible that the Government, in either Criminal Action No. 19270, or in this Civil Action No. 6747-Y, or both, may subpoena all or a substantial number of these important executives of the Company as witnesses at the trial of these cases, and it is a certainty that the Company will use some of these executives as witnesses, and also to assist Counsel at the trial of these cases.

5. That the interests of justice will not be served unless this Civil Action is transferred to Chicago for trial, and this is especially true in view of the fact that the companion Criminal Case, for good cause shown, has already been so transferred as stated above; the expense and hardship to the defendants of educating two sets of local defense counsel, one group in Chicago to prepare to try the Criminal Case and another group in Los Angeles to prepare and try the Civil Case, is apparent.

6. That if the said cases are tried consecutively in the same court, it is probable that facts developed in the first case may be stipulated to a large extent in the second case, which would save a great deal of time and expense to the Government, and to the defendants,

all of which is in the interest of justice; this could not be accomplished if the respective trials are held two thousand miles apart.

Joseph Thomas,

JOSEPH THOMAS,

General Counsel, The Firestone Tire

& Rubber Company, Akron, Ohio.

Subscribed and sworn to before me this 4th day of September 1947.

Mabel Joynt,

MABEL JOYNT.

Notary Public.

My Commission Expires June 5, 1950.

Received copy of the within affidavit this 11th day of September 1947.

W. C. Dixon,

H. S.

Attorney for U. S.

174 In the District Court of the United States, Southern District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Affidavit of C. Frank Reavis in support of motion to dismiss

Filed Sep. 11, 1947

STATE OF NEW YORK.

County of New York, ss:

C. Frank Reavis, being duly sworn, deposes and says:

1. I am a member of the law firm of Hodges, Reavis, Pantaleoni & Downey, 20 Pine Street, New York City, N. Y., General Counsel for the defendants National City Lines, Inc. (hereinafter called National), American City Lines, Inc. (hereinafter called American), and Pacific City Lines, Inc. (hereinafter called Pacific). I am also a member of the Board of Directors and a member of the Executive Committee of the Board of Directors of the defendant National, I submit this affidavit in support of the motion for an order dismissing the complaint on the ground that, in the interest of justice, this action should be tried in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago).

2. As appears from the affidavit of E. Roy Fitzgerald, sworn to June 16, 1947, also submitted in support of this motion, National is the central or principal defendant in this action. That

175 corporation has no office in California and has never transacted business and cannot be found in that State. It was organized in Delaware and has always had its principal office in Chicago, Illinois. The same was true with respect to the defendant American prior to its merger into National, on July 15, 1946, and is true, of course, with respect to the presently existing American City Lines, Inc., which was formed in Delaware on the same date and which has never transacted any business anywhere. The defendant Pacific is a wholly owned subsidiary of National. It was also organized in Delaware and it has never transacted business and cannot be found in the Southern District of California.

3. It is apparent from a reading of the complaint in this action and the Indictment in Criminal Action No. 19270 returned by the Grand Jury in this District, that both actions were commenced simultaneously, that the corporate defendants in both are the same, and that the alleged conspiracies complained of in both are identical and are based upon the very same activities, concert of action and course of conduct which the Government contends were illegal and in restraint of trade in violation of the Sherman Act (15 U. S. C. A. §§ 1, 2). The only difference between the two actions is the relief sought. In the criminal action the Government is seeking to have criminal penalties imposed upon the corporate defendants and certain of their officers for such alleged violations, and in the civil action the Government is seeking injunctive relief restraining the corporate defendants from continuing the same alleged violations and from continuing to reap the benefits of the same alleged illegal activities.

176 4. This Court has already found that it would impose unnecessary hardships on the defendants and entail unjustifiable expenses if the criminal action were to be tried in this jurisdiction. Consequently, by order dated August 14, 1947, this Court ordered that, in the interests of justice, the criminal action be transferred to the United States District Court for the Northern District of Illinois, Eastern Division, for trial. The very same reasons which impelled the Court to make such a finding in the criminal action applies with like effect to the civil action. A trial of the civil action in this jurisdiction would impose the very same unnecessary hardships on the defendants and would entail the very same unjustifiable expenses. These could be eliminated if, like the criminal action, the civil action was also to be tried in Chicago.

5. Moreover, if the civil action has to be tried in this jurisdiction and the criminal action in Chicago, it is clear that not only would these unnecessary hardships and unjustifiable expenses continue to vex and oppress the defendants to their prejudice, but

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they would be considerably aggravated by the fact that the two actions would have to be defended in two widely separated forums. Each corporate defendant would have to retain local counsel to represent and defend it in Los Angeles and other local counsel to represent and defend it in Chicago. Deponent's firm, being located in New York City, could not represent National, American, or Pacific in connection with either the Los Angeles action or the Chicago indictment. Therefore these companies would have to bear the expense and harassment of the employment of two sets of lawyers situated in two cities far distant from each other.

177 6. Both Los Angeles and Chicago counsel would have to be furnished with copies of all the numerous papers, records, and documents which relate to and have a material bearing on the matters complained of in both actions. Considerable time would have to be spent by both counsel in studying and fully understanding these documents. Both Los Angeles counsel and Chicago counsel would have to be made thoroughly familiar with all the details and ramifications of the businesses of the various defendants and of the business dealings and relations which the various defendants had with each other from 1937 to date. Both Los Angeles counsel and Chicago counsel would have to confer from time to time over a period of weeks and perhaps months, with the numerous executives and key employees of the defendants whose testimony may be material and relevant at the trials of both actions. In other words, every step taken by the defendants and their executive officers and employees with their counsel in Los Angeles, in preparing for trial in Los Angeles, would have to be duplicated with their counsel in Chicago, in preparing for trial in Chicago.

7. This duplication of effort would be financially costly to the defendants. Counsel fees would have to be paid to two sets of local counsel for work which could properly be performed by one, at one fee. In addition, twice the amount of time would have to be spent in preparing the two actions for trial than would be necessary if both actions were to be tried in one jurisdiction. As far as the many officers and employees of the defendants familiar with the transactions complained of are concerned, this time would have to be taken from the regular normal corporate activities of the defendants.

178 8. This unnecessary expenditure of time, money, and effort would be oppressive and highly prejudicial to the corporate defendants, would not be in the interests of justice, and could be avoided by having both actions tried in one forum. That the proper forum is the United States District Court for the Northern District of Illinois, Eastern Division (Chicago) is clear

from the opinion rendered by this Court in ordering the criminal action transferred to that district for trial.

C. FRANK REAVIS.

Sworn to before me this 3d day of September 1947.

[SEAL]

HELEN WORTH,
Notary Public, State of New York,
Residing in New York County.

N. Y. Co. Clk's No. 290 Reg. No. 452-W-8; Kings Co. Clk's No. 183 Reg. No. 298-W-8.

Commission Expires March 30, 1948.

Service of a copy of the within affidavit is hereby acknowledged this — day of September 1947.

WILLIAM C. DIXON,
JESSE R. O'MALLEY,
LEONARD M. BESSMAN,
By LEONARD M. BESSMAN,
Attorneys for Plaintiff.

179 In the District Court of the United States Southern
District of California, Central Division

Civil Action No. 6747-Y

[File endorsement omitted.]

[Title omitted.]

Reply affidavit of C. Frank Reavis

Filed Sept. 15, 1947

STATE OF CALIFORNIA,

County of Los Angeles, ss:

C. Frank Reavis, being duly sworn, deposes and says:

1. I am a member of the firm of Hodges, Reavis, Pantaleoni & Downey, 20 Pine Street, New York 5, New York, general counsel for the defendants National City Lines, Inc. (hereinafter called National), American City Lines, Inc. (hereinafter called American), and Pacific City Lines, Inc. (hereinafter called Pacific). I am also a member of the Board of Directors and a member of the Executive Committee of the Board of Directors of the defendant National. I submit this affidavit in reply to the affidavit of Jesse R. O'Malley (hereinafter called the Government's affidavit),
180 submitted in opposition to the motion for an order dismissing the complaint herein on the ground of forum non conveniens.
2. The Government's affidavit is identical with the affidavit it filed in the criminal action against the same defendants, with the exception of one or two immaterial and irrelevant changes.

3. For a detailed answer to the Government's affidavit I respectfully refer to the affidavit of E. Roy Fitzgerald, sworn to on August 6, 1947, which was submitted in answer to the Government's affidavit in the criminal action. A copy of Mr. Fitzgerald's affidavit is attached hereto as Exhibit A.

4. This Court, in commenting upon the Government's affidavit in the criminal action, stated as follows:

"The facts, in the main, are undisputed. In truth, the Government, at first, did not deny the affidavit filed on behalf of National. Realizing, at the oral argument, that they may have treated the matter lightly, the Government sought and obtained leave to file a counteraffidavit. This counteraffidavit does not, on the whole, deny the facts relating to National and to the other nonresident defendants. In substance, it asserts that many of the Government witnesses are local and that, in the presentation of its case before the Grand Jury, it used many documents which were supplied locally. Granted that this is so, how can it be assumed, in the face of sworn statements to the contrary, that documentary and other proof to be presented by the defendants is available locally?"

181 5. As distinguished from the statements in its affidavit, the Government in its brief states two conclusions which I believe are at variance with the facts, and to which attention should be drawn:

A. At page 9 the Government states:

"The case at bar goes beyond the requirements laid down in the Standard Oil case and, as shown in the Government's affidavit, all but one of the defendants in the instant case are found or transact business in the Southern District of California on a substantial basis."

The only facts stated by the Government to sustain the above conclusion is the statement that National owns control of the Los Angeles Transit Lines and of the Long Beach City Lines.

The Government in its affidavit does not set forth any facts respecting Pacific City Lines to justify its conclusion that this company is doing business within this district.

I respectfully state to the Court that neither National, American, or Pacific transact business within the Southern District of California nor are any of them found in that district.

Mack Manufacturing Corporation submitted an affidavit to the effect that it does no business in this district and is not found here, although it owns securities of a company which does do business here. The Government itself states that Phillips Petroleum Company was not doing business in this district when this suit was commenced and that it is not found in this district. I am

also advised that Federal Engineering Company does no business in this district and is not found here.

182 Hence six of the nine defendant companies were neither found in nor doing business in this district when this action was commenced. It is to be observed that the complaint alleges that only two defendant companies—General Motors Corporation and Standard Oil of California—were doing business in this district. Service of summons on National, American, and Pacific was made outside this district, the Government apparently relying upon the provisions of Section 5 of the Sherman Act (15 U. S. C. A. Sec. 5) for authority to do so. This, in itself, is a recognition of the fact that National, American, and Pacific do no business and cannot be found in this district.

B. At page 20 the Government states in its affidavit that:

“* * * the case at bar wherever it will be tried * * * will require supervision by an equity court of nine primary corporate defendants organized under the laws of Delaware and Ohio and domiciled in Illinois, California, Michigan and Ohio.”

The fact of the matter is that while there would be required detailed future supervision of corporate operations if the Court finds for the Government in this action, this would be confined almost entirely to supervision of National, a Delaware company operating from Chicago. As this Court found (page 13 of the opinion in the criminal case):

“the head and front of the offending is National City Lines, Inc., and its subsidiaries, American City Lines, Inc., and Pacific City Lines, Inc., and especially National which owns and controls the two others. National has its main place of business in Chicago, Illinois. All of its records are located there.”

183 The prayer for relief in this action (other than a prayer to require a divesting of the stock of National, American, and Pacific owned by the suppliers and a declaration that the investment contracts between the suppliers and National, American, and Pacific are void) is for an injunction and an order against National, American, and Pacific. This injunction would control the purchase by them of equipment, motorbusses, tires, tubes, and petroleum products and the acquisition of any further interests in operating companies and this order would require a disposition of the interest of these companies in local transportation companies.

Thus it is clear that while, as said, a detailed and continued supervision of National will be necessary under any decree, no supervision would be necessary of the other corporate defendants.

Such a supervision could be conducted with efficiency only from Chicago.

C. FRANK REAVIS:

Subscribed and sworn to before me this 15th day of September 1947.

[SEAL]

AGNES E. SHULTZ,
Notary Public in and for the County
of Los Angeles, State of California.

184 Exhibit "A" to reply affidavit of C. Frank Reavis

In the District Court of the United States for the Southern District of California, Central Division

* Criminal Action No. 19270

UNITED STATES OF AMERICA,

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANTS

Reply affidavit of E. Roy Fitzgerald in support of motion to transfer proceeding to District Court of the United States for the Northern District of Illinois, Eastern Division.

STATE OF ILLINOIS,

County of Cook, ss:

E. Roy Fitzgerald, being duly sworn, deposes and says:

1. I am one of the defendants named in the indictment. I am a Director and President of National City Lines, Inc., a defendant (hereinafter called National). This affidavit is in reply to the affidavit of Jesse R. O'Malley, one of the counsel for the Government, in opposition to the motion by all the defendants for an order, pursuant to Rule 21 (b) of the Federal Rules of Criminal Procedure, that in the interest of justice this proceeding be transferred from this district (where no one of the defendants
185 has his or its principal place of business or resides) to the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

2. I respectfully represent that the opposing affidavit deals with matters concerning certain local operating companies which are irrelevant or inconsequential with respect to the ultimate grounds of the motion—the hardship to the defendants, especially National, of a trial in this district and the importance, if there is to be a full and fair inquiry, of a trial in Chicago.

3. In order to appraise the significance of the matters raised in the opposing affidavit it is necessary again to consider the nature

of the restraints charged. The indictment alleges a concert of action extending over ten years commencing 1937 to acquire a substantial financial interest in companies which provide local transportation service and to eliminate and exclude all competition in the sale of motorbuses, petroleum products, tires and tubes to such companies (Indictment par. 21). National is the central defendant and the indictment concerns and attacks its relationship with the supplier defendants. The transportation system in Los Angeles is only one of the more than forty operations in which National is interested and this interest was acquired only in 1945, more than eight years after the alleged commencement of the concert of action in 1937. The basic transactions and relationships upon which the proceeding seems to be based are:

(a) National in 1939 and American City Lines, Inc. 186 (organized in 1943) in 1943 and 1944 made certain agreements with the suppliers under which they provided money to National or American against their securities (Indictment pars. 22 and 23). Such agreements were negotiated by the chief executive officers of the various corporations and were principally agreed upon in Chicago. These agreements were executed in Chicago by National or American and were severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard). The stock of National or American so purchased was paid for and delivered in Chicago. When American was merged into National in 1946, a merger whose terms were negotiated in Chicago, the stock of American previously purchased by certain of the suppliers was exchanged for stock of National.

(b) National in 1939 and American in 1943 and 1944 made certain agreements with the suppliers to purchase certain supplies (Indictment pars. 22 and 23). Such agreements were executed by the chief executive officers of the various companies in Chicago and were principally agreed upon in Chicago. After each contract was approved it was executed by National or American in Chicago and then severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard).

(c) National has always been managed from Chicago. 187 All investigations respecting transit properties in the United States and the purchase of interests in transit properties were directed from Chicago by National and American. All important policies and decisions in connection with the purchase of interests in operating companies were made by National or American in Chicago.

4. Thus, it is the contracts and relationships between National and the suppliers that are challenged. It is a broad and national concert of action that is charged. It is at once apparent that the vital matters at any inquiry will not concern the local matters affecting the individual operating companies, but will concern the basic and "over-all" management and financial policies of National and National's relationship with its suppliers. The essential matters will be the organization of National in Chicago in 1936; its growth and operation; its relationships and contracts with the supplier defendants and other suppliers, all of which took place in or stemmed from Chicago; the financing of National in and from Chicago; and the purchase of and directions and supervision of operating companies, all of which took place in and from Chicago. All of these matters involve decisions and determinations made, on the highest management level, by executive officers of National and the supplier defendants in and about Chicago and the home offices of the suppliers. The essential testimony as to all these fundamental policies, decisions, and transactions must come from the executive officers of National and the supplier defendants, all of whom reside and have their place of business far from this district. The relevant documentary proof must come from the records maintained at the home offices of all these companies, all of which are far removed from this district. The opposing affidavit does not and cannot question this.

5. The opposing affidavit deals with "local" or inconsequential matters which will not be a vital part of this inquiry. It does not even attempt to confine such "local matters" to this district, but speaks generally of the "Pacific coast area"—a wide area of which this district is only a part. While no purpose would be served by commenting in detail on all such "local matters," it may be appropriate to refer to some of the matters set forth in the opposing affidavit.

(a) The opposing affidavit attempts to outline the testimony which will be offered respecting National (p. 2): Reference is there made to the alleged activities in the "West Coast area" of a number of companies and it states that the evidence will cover the activities of National "within the past three years relating to the manner and method whereby it secured control of Pacific City Lines, Inc., the Los Angeles Transit Lines, the Long Beach City Lines, and the Key System which operates in Oakland and the San Francisco Bay area in the State of California, as well as the relations between such companies and the supplied defendants * * *". The above allegations are substantially the only ones in the opposing affidavit regarding the activities of National

upon which it is sought to justify a trial in the Southern District of California. Stripped of its general language this merely means that National acquired control of these companies. This was done by purchase, except in the case of Pacific City Lines, Inc., in which there was an exchange of stock, arranged and carried out in Chicago. The gist of the indictment is not the making of such purchases—but the alleged broad concert of action between National and the suppliers. Purchasers of interests in transportation properties were made by National in over forty communities and it certainly could not be argued that this case could fairly be tried in any one of them.

(b) The opposing affidavit (pp. 2, 3) contains general averments that a large amount of documentary evidence will be subpoenaed by the Government from companies doing business in the "Pacific coast area" and that more than three hundred documents were subpoenaed from Pacific City Lines, Inc., during the Grand Jury investigation. Again—the Government could subpoena every book and record of any company, including Pacific City Lines, Inc., without affecting the ultimate fact that the alleged offense lies elsewhere and the substantial proof lies elsewhere—in Chicago. It is understandable that the Government obtained much material regarding local matters from many documents, extending from the East to the West coast.

(c) The opposing affidavit states (p. 3) that all the supplier defendants, except Phillips, do business in this district. However, the question is not one of venue and there is no significance in the fact that the supplier defendants may be here engaged in local sales activities.

(d) The opposing affidavit refers (p. 4) to the fact that defendant Beamsley and I are directors of Los Angeles Transit Lines. It has been only natural for officers of National to serve as directors of companies in which National is interested. Thus, defendant Beamsley and I are members of the Board of Directors of St. Louis Public Service Company and I am a member of the Board of Baltimore Transit Lines. The opposing affidavit again refers (p. 4) to the "manner and method" of the acquisition of control of the Los Angeles Transit Company. But, again, this is not relevant to the main issue in the case.

(e) The opposing affidavit alleges (pp. 4, 5) that since National is a decentralized company "evidence to be produced by such defendant on trial" will be obtained from the files of its subsidiaries. This is in error. National is, of course, decentralized in that local operations of its wholly owned subsidiaries are carried on locally, and the operations of the companies in which it has investments are all carried on locally. These operations, how-

ever, have nothing to do with the alleged concert of action between National and the suppliers. All files (as to National) with respect to the broad concert of action alleged are located in the main office of National in Chicago and (as to the suppliers) are, to my information and belief, located at the main offices of the respective suppliers.

The opposing affidavit quotes a statement by C. Frank Reavis, counsel and a director of National, in a hearing before the Public Service Commission of Maryland, that "each subsidiary in its own city is responsible for its own operations." This statement was made in 1944 with respect to the operating companies, mostly in the Midwest, which were 100% owned by National, and referred to the local affairs of these companies, such as labor relations, maintenance of 100% equipment, and other like matters of daily operation. As stated in my main affidavit with respect to such subsidiaries (p. 5), the books of account have been kept in Chicago, their purchases of supplies have been arranged in Chicago, and their operations supervised in Chicago. However, it is not such operation by the local units that is attacked in this proceeding, but the basic policies and decisions of National involved in its relationships with the suppliers, all of which have necessarily been made from or in Chicago. The relationship of National with the suppliers with respect to all companies in which National has been interested has always been carried on in Chicago.

(f) The opposing affidavit refers (p. 5) to the total assets of the Key System and the price paid for the securities of Los Angeles Transit Lines. This is irrelevant, as it would be irrelevant to mention that the total assets of the Baltimore Transit Company and St. Louis Public Service Company, in which National has investments, were, as of December 31, 1946, \$56,731,650.48 and \$44,721,927, which is substantially in excess of the total assets appearing on the balance sheet of either the Los Angeles Transit Lines or the Key System. While reference is made to the total dollar amount of supplies sold to the operating companies in the Pacific Coast area—not this district (p. 5), this fiscal information has no significance since the essential matters are the dealings and purchase policies between National and the suppliers, policies negotiated and determined in places far distant from this district.

(g) Reference is made to Pacific City Lines, Inc. (all of whose operations are outside of this district). As set forth in my main affidavit (p. 6), the supply contracts between Pacific and certain of the suppliers were prepared and executed by the suppliers at their main offices, Akron, Detroit, Pontiac, and San Francisco, and were executed by Pacific in Oakland, Cali-

fornia. The general policies of Pacific are directed in Chicago and dealings and negotiations between Pacific and the suppliers are carried on principally in Chicago or at the main offices of the particular suppliers.

(h) The mere circumstance that there might be some witnesses or some documents in this district cannot defeat the overwhelming justice in the application of defendants for a removal of this proceeding.

6. A transfer of the proceeding to Chicago is more than a matter of "convenience" to the defendants but is essential to avoid unnecessary hardship and to insure, by the availability of all important proof, a full and fair trial and is in the interests of justice. No facts are set forth in the opposing affidavit to weaken or question the factual showing of such hardship in the moving affidavits. Again, to summarize briefly, the compelling grounds for such transfer:

(a) Most of the many witnesses, including executive officers and key employees, who will be required to testify, reside in or about Chicago, or in Akron, Ohio, or in Detroit, Michigan, or in Bartlesville, Oklahoma, or in New York City, for all of whom Los Angeles would be remote and Chicago a vastly more centrally located place.

(b) All of the executive officers and key employees of National, substantially all of whom reside in or about Chicago, will be required to attend the trial and their absence from Chicago 193 would seriously interfere with the proper management of National and the many companies in which it is interested and will impose a great hardship upon National and its stockholders. As for National, this will include affiant and Mr. Beamsley, both of whom must necessarily attend through the trial; Ed Fitzgerald, Vice President and Treasurer; E. V. Anderson, Vice President and Comptroller; J. M. Schramm, Secretary and Assistant Treasurer, and G. L. Walker, Assistant Secretary, all of which officers of National have their offices and reside in or about Chicago.

(c) The main body of the large volume of documentary evidence is located in Chicago or in the home offices of the defendant suppliers, all of which are far distant from Los Angeles.

(d) A great burden of expense will be imposed upon the defendants, especially National, if the trial is held in Los Angeles, rather than Chicago.

7. I respectfully urge that it would be difficult to find a more appropriate case for the application of Rule 21 (b) bearing in mind the essential purpose of the Rule as it appears from the language of the Rule and the many advisory notes and comments

of its draftsmen. I pray the Court for an order transferring the proceeding to the District Court in Chicago.

E. ROY FITZGERALD.

Sworn to before me this 6th day of August 1947.

[NOTARIAL SEAL]

MARY E. JOYCE,
Notary Public in and for the
County and State aforesaid.

Received copy of the within affidavit this 15th day of September 1947.

W. C. DIXON,
H. S.
Attorney for U. S.

Letter

September 18th, 1947.

[File endorsement omitted.]

Re: U. S. v. National City Lines, Inc., et al., Civil No. 6747-Y

Honorable LEON R. YANKWICH,
Judge, United States District Court,
Court Room No. 5, Federal Building,
Los Angeles 12, California.

DEAR JUDGE YANKWICH: Some question has arisen among counsel for defendants as to whether or not the record in the above case is clear that all the defendants believe the Northern District of Illinois, Eastern Division, is the proper forum for the above action. In order to avoid any misunderstanding, the defendants are willing to and do hereby agree that if the above-entitled action is dismissed on the motions of the defendants now under submission and a new suit based on the same charges is filed in the District Court for the Northern District of Illinois, Eastern Division, the defendants will not move in said court for a dismissal of said action on the ground that said court is an inconvenient forum or on the ground that the ends of justice do not require that nonresident defendants be summoned and served pursuant to Section 5 of the Sherman Act.

For convenience, counsel for all defendants have joined herein and are willing that this statement be made a part of the record in the above-entitled action.

O'MELVENY & MYERS,

By JACKSON A. CHANCE

*Attorneys for Defendants National City Lines, Inc.,
American City Lines, Inc., and Pacific City Lines, Inc.*

COSGROVE, CLAYTON, CRAMER & DIETHER,

By T. B. COSGROVE

Attorneys for Defendant General Motors Corporation.

FINLAYSON, BENNETT & MORROW,

By T. H. MORROW

Attorneys for Defendant Phillips Petroleum Company.

HAIGHT, TRIPPET & SYVERTSON,

By OSCAR A. TRIPPET

Attorneys for Defendant Firestone Tire & Rubber Company.

LAWLER, FELIX & HALL,

By JOHN M. HALL,

*Attorneys for Defendants Standard Oil
Corporation of California and Federal
Engineering Corporation.*

WRIGHT & MILLIKAN,

By CHARLES E. MILLIKAN,

Attorneys for Defendant Mack Manufacturing Corporation.

196 In the District Court of the United States Southern District
of California, Central Division

Honorable LEON R. YANKWICH, Judge

[File endorsement omitted.]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC
CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL
MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK
MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CAL-
IFORNIA, FEDERAL ENGINEERING CORPORATION, DEFENDANTS

Order on motion

Sept. 29, 1947

The various motions of the defendants, heretofore argued and submitted, are now decided as follows:

(1) Upon the grounds stated in the opinion filed this day, the motions of the defendants to dismiss the Complaint, as amended

and supplemented, are, and each of them is, granted and the said Complaint is hereby ordered dismissed as to each and all the defendants.

(2) The motions of the defendants for a more definite statement or for a bill of particulars are, and each of them is, denied.

Dated this 29th day of September 1947.

197 In the District Court of the United States Southern District of California, Central Division

No. 6747-Y Civil

Honorable LEON R. YANKWICH, Judge

[File endorsement omitted.]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, FEDERAL ENGINEERING CORPORATION, DEFENDANTS

Opinion

Sept. 29, 1947

198

APPEARANCES

For the Government: Tom C. Clark, Attorney General of the United States; John F. Sonnett, Assistant Attorney General; William C. Dixon, Special Assistant to the Attorney General; Robert L. Rubin, Special Assistant to the Attorney General; James E. Kilday, Special Assistant to the Attorney General; Jesse R. O'Malley, Special Attorney; Leonard M. Bessman, Special Attorney; James M. Carter, United States Attorney.

For the Defendants: National City Lines, Inc., American City Lines, Inc., by Pacific City Lines, Inc., by Hodges, Reavis, Pantaleoni & Downey, New York; O'Melveny & Myers, Louis W. Myers, Pierce Works, Jackson M. Chance, Los Angeles, California. Firestone Tire & Rubber Co. by Joseph Thomas, Akron, Ohio; Haight, Trippet & Syvertson, Oscar A. Trippet, Frank B. Yoakum, Sr., Los Angeles, California. General Motors Corporation, by Cosgrove, Clayton, Cramer & Diether, T. B. Cosgrove, Leonard A. Diether, Los Angeles, California. Phillips Petroleum Company, by Finlayson, Bennett, & Morrow, H. T. Morrow, Los Angeles, California. Mack Manufacturing Corporation, by Wright &

Millikan, Charles E. Millikan, Los Angeles, California. Standard Oil Company of California, Federal Engineering Corporation, by Lawler, Felix & Hall, John M. Hall, Los Angeles, California.

199 YANKWICH, District Judge:

I

THE NATURE OF THE PROCEEDINGS

On August 14, 1947,¹ in *United States v. National City Lines et al.*, I transferred to the Northern District of Illinois, Eastern Division, a criminal antitrust prosecution instituted against the nine corporate defendants involved in this suit and seven individuals. The ruling was made under the provision for change of venue contained in the Federal Rules of Criminal Procedure.²

In the present suit, I am asked to dismiss a Complaint in equity instituted by the Government under Section 4 of the Sherman Anti-Trust Law.³ The factual background of the two cases is the same.

The States of organization of the defendants are as follows: National City Lines, Inc., Delaware; American City Lines, Inc., Delaware; Pacific City Lines, Inc., Delaware; Standard Oil Company of California, Delaware; Federal Engineering Corporation, California; Phillips Petroleum Company, Delaware; General Motors Corporation, Delaware; Firestone Tire & Rubber Company, Ohio; Mack Manufacturing Corporation, Delaware.

The Government claims that all the defendants except Phillips do business in the district or are to be found in it. However, the affidavits on file show conclusively that only three of the defendants do business or are found in the district—Standard, General Motors, and Firestone. The chief defendants, through whom control is exercised—National and American—have always had their main offices in Chicago, Illinois, where all their records are kept.

In substance, the Government charges that National and its subsidiaries, American, and Pacific, own and control, or have a substantial financial interest in corporations which are referred to as "operating companies," and which are engaged in providing local transportation service in more than forty-two cities in sixteen States.

The operating companies of the defendants National, American, and Pacific use large quantities of busses, tires, tubes, and petroleum products, which are manufactured and handled by the supplier defendants, such as Phillips, Standard, General Motors, Mack, and Firestone. The Government charges that, beginning on or about January 1, 1937, and continuing to the filing of the

¹Footnotes on pp. 145 and 146.

Complaint on April 10, 1947, the defendants have engaged in an unlawful combination and conspiracy to acquire ownership, control or a substantial financial interest in a substantial part of local transit companies in various cities, towns and counties in various States of the United States and

“to restrain and to monopolize the aforesaid interstate commerce in motorbusses, petroleum products, tires, and tubes sold to local transportation companies in cities, counties, and towns in which National, American, and Pacific have, or have acquired, or in the future acquire, ownership, control, or a substantial financial interest in said local transportation companies, all in violation of Sections 1 and 2 of the Sherman Anti-Trust Act. Defendants threaten to and will continue to violate Sections 1 and 2 of the Sherman Anti-Trust Act unless the relief hereinafter prayed for is granted.”

The means of achieving this result are stated to be these: “Supplier” defendants have furnished money and capital to National, American, and Pacific who have, in turn, caused their operating companies to purchase practically all their requirements in tires, tubes, petroleum products, and busses from the supplier defendants to the exclusion of products competitive with them. Money made available by the supplier defendants was used to acquire control of local transit companies through the operating companies. National, American, and Pacific would not renew contracts with others for the purchase or rental of materials and equipment without the consent of the supplier defendants. When an operating company was sold, National, American, and Pacific would require the new owner to assume the burden of the contracts for the exclusive purchase of equipment and supplies. No change of type of equipment or conversion to another type would take place without the consent of the supplier defendants. The business of dealing in such supplies and equipment would be allocated to the supplier defendants in an artificial, arbitrary, and uncompetitive manner. Between January 1, 1939, and the date of the filing of the Complaint, the amounts of stock purchased by the supplier defendants in National, American and Pacific were as follows:

Name of Supplier Defendant:	Amount paid for stock purchased
Standard Oil Company of Calif., Federal Engineering Corporation.....	\$2, 074, 310. 57
General Motors Corporation.....	3, 190, 802. 32
Phillips Petroleum Company.....	1, 574, 064. 82
Firestone Tire & Rubber Company.....	1, 383, 403. 41
Mack Manufacturing Corporation.....	1, 300, 071. 43

The effect of the combination and conspiracy, the Complaint avers, is to eliminate competition from other suppliers in the sale of supplies and equipment to National, American, and Pacific and

their operating companies, and to restrain interstate commerce in such equipment substantially and unreasonably, so far as the transportation companies controlled by National, American, and Pacific are concerned, to charge noncompetitive prices for such equipment and to allocate the nation-wide markets of the defendants National, American, and Pacific and their operating companies for supplies and equipment between the various supplier defendants. To end these practices, the Government seeks a decree declaring that the defendants are engaged in a conspiracy in violation of the Sherman Act, that the supplier defendants be required to divest themselves of stock and other interests in the traction companies, that contracts between the parties be declared void, and that the traction and operating companies be enjoined from acquiring their equipment from the suppliers. In addition to this, the following more specific prayers are included which are set forth in full because of their significance in the discussion to follow:

201 "5. That the defendants National, American, and Pacific be ordered to make such disposition of their interests and holdings in local transportation companies as is necessary to restore competition and to dissipate the effects of the unlawful conspiracy; and that defendants National, American, and Pacific be permanently enjoined from acquiring, directly or indirectly, any financial interest in any local transportation system operating in any city, town or county of any State of the United States without first obtaining the approval and authority of this Court:

"6. That the defendants herein and each of them and their officers, directors and representatives and all persons and corporations acting or claiming to act on behalf of them be perpetually enjoined and restrained from combining and conspiring to monopolize or to restrain interstate trade and commerce of the United States in the manner and by the means described herein, and be perpetually enjoined from engaging in or participating in agreements, understandings, practices, or arrangements having a tendency to revive or continue any of the aforesaid violations of the Sherman anti Trust Act."

The defendants have moved to dismiss the Complaint upon the ground of inappropriate forum. Their motions bring into play the doctrine of forum non conveniens.

II

THE DOCTRINE OF FORUM NON CONVENIENS

The doctrine of forum non conveniens is not of statutory origin. In Anglo-American law, it has been used as a means of declining jurisdiction whenever "considerations of convenience,

efficiency and justice" * point to another tribunal than that chosen by a litigant as the appropriate tribunal. And courts of equity will "go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *

This doctrine which permits a court having jurisdiction to refuse to exercise it has been applied either under its Latin name, *forum non conveniens*, or under its truncated English name, *inappropriate forum*, in many cases arising in Admiralty * and in Equity. †

The problem before us must be solved in the light of the principles which have governed its application.

In each instance, the Court which declined to exercise jurisdiction had jurisdiction, and the plaintiff had a choice of venue. Thus, when, under a statute, jurisdiction in a proceeding to limit liability could be brought in either the state court or the federal court, the federal court, in its discretion, could enjoin the prosecution of the action in the state court. ‡ And when a stockholders' suit relating to the affairs of a corporation could properly be brought in either the state or the federal courts, it was held the federal district court could, in its discretion, dismiss the suit. §

The more recent cases of the Supreme Court applying 202 this doctrine must be interpreted in the light of these principles. ¶ Indeed, the nub of the controversy between the parties here is as to the meaning of these cases, and especially the *Gulf and Koster* cases. **

It is the Government's contention that these cases lay down a distinction between general venue and special venue statutes and that the doctrine of *forum non conveniens* does not apply to cases in which the Congress, by a special venue statute, has given to the plaintiff the choice of forums.

None of these cases define the difference between the two types of venue statutes.

It is evident, however, that a general venue statute would be exemplified by the provisions of the Judicial Code to the effect that actions shall generally be brought against a person only in the district of which he is a resident, or, in diversity cases, in the district of the residence of either the plaintiff or the defendant. †† The mere existence of a choice of forums does not, as the cases already cited †‡ indicate, make a statute one of special venue. Special venue statutes are statutes in which the Congress has legislated with reference to a particular kind of actions and has decreed that they might be brought in several forums, in some of which they could not be brought but for such legislation. Illus-

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trative are: actions relating to copyrights,¹⁴ patent infringements,¹⁵ actions for the recovery of taxes under the Internal Revenue Act,¹⁷ and stockholder's derivative suits.¹⁸ Of the same type is the special venue provision of the Federal Employer's Liability Act.¹⁹ This Act gives to an injured employe a choice of three places where he might bring his action: (1) the district of the defendant's residence; (2) the district where the cause of action arose; and (3) the district in which the defendant is doing business at the time when the action is begun.

Concededly suits like the present one, instituted by the Government to enjoin violations of the Sherman Anti-Trust Act, are also governed by a special venue provision. Under it, such suits may be brought in the judicial district (1) where the corporation is an inhabitant, (2) in the district where it may be found, and (3) in the district where it transacts business.²⁰

III

DOES THE DOCTRINE OF INAPPROPRIATE FORUM APPLY TO ACTIONS BROUGHT UNDER SPECIAL VENUE STATUTES?

It is the contention of the Government that when an action is governed by a special venue provision, the choice of forum by the actor in the case, be he individual or government, is absolute, and the doctrine of inappropriate forum is inapplicable.

There is a language in the Gulf case which, at first blush lends support to this contention. I so read the case myself and gave expression to the thought in a recent opinion.²¹ The language reads:

"It is true that in cases under the Federal Employer's Liability Act we have held that plaintiff's choice of a forum cannot be defeated on the basis of *forum non conveniens*. But this was because the *special venue* act under which the cases are brought was believed to require it. *Baltimore & Ohio R. R. v. Kepner*, 314 U. S. 44; *Miles v. Illinois Central R. R.*, 315 U. S. 698. Those decisions do not purport to modify the doctrine as to other cases governed by the *general venue* statutes."²² [Italics added.]

This language must be studied in the light of the cases to which the Supreme Court was referring, the Federal Employer's Liability cases,²³ and of the opinion delivered on the same day in the *Koster* case and written by the same Justice.²⁴

When passed in 1908, the Federal Employer's Liability Act contained no special venue provisions. In 1910, it was amended to allow the present choice. Even before the decisions in the *Kepner*²⁵ and *Miles*²⁶ cases, lower federal courts had held that the

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privilege of venue conferred by this section was absolute and not subject to the discretionary power of the courts to nullify the choice upon any ground.²⁰ Writers have inveighed against the unfairness of allowing so wide a choice.²¹ Occasionally even a trial judge has expressed regret at his inability to grant relief in such cases.²² And there is now pending a Bill before the Congress to limit the exercise of the right of the employee to choose the forum.²³ But, except during the First World War, when the Director General of the Railroads, under his war powers, issued an order providing that suits should be brought only in the district where the plaintiff resided at the time of the accrual of the action, or where the cause of action arose—an order which received the approval of the Supreme Court²⁴—there has been no deviation from this strict interpretation of the venue provision. And when the Supreme Court adopted, in the *Kepner* and *Miles* cases, this rigorous interpretation of the statute, it merely continued the tradition which had been inaugurated by the lower courts. They all saw in the special venue provision of this particular law a direct mandate of the Congress which left no room for variation. This is quite evident from the following language in the concurring opinion of Mr. Justice Jackson in the *Miles* case:

"The functioning of this backward system of dealing with industrial accidents in interstate commerce burdens it with perhaps two dollars of judgment for every dollar that actually reaches those who have been damaged, and it leaves the burden of many injuries to be borne by them utterly uncompensated. Such being the major burden under which the workmen and the industry must function, I see no reason to believe that Congress could not have intended the relatively minor additional burden to interstate commerce from *loading the dice a little in favor of the workman* in the matter of venue. It seems more probable that Congress intended to give the disadvantaged workmen some leverage in the choice of venue, than that it intended to leave him in a position where the railroad could force him to try one lawsuit at home to find out whether he would be allowed to try his principal lawsuit elsewhere. This latter would be a frequent result if we upheld the contention made in this case and in the *Kepner* case."²⁵ [Italics added.]

This concurring opinion has a special significance because, with four justices dissenting, there would be no majority opinion without it. Added significance is given to this language by the fact that Mr. Justice Jackson also wrote the majority
204 opinions in the *Gulf* and *Koster* cases. And, because the question here turns on the meaning of the language already quoted in the *Gulf* case, the historical review which we have just

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given is of utmost significance. It shows clearly that what Mr. Justice Jackson, speaking for the majority of the court, meant to say was not that any special venue act excluded the application of the doctrine of inappropriate forum, but that the particular special venue statute under consideration, in the light of its history, excluded the application of the doctrine. And this is also apparent from a consideration of the opinion of Mr. Justice Jackson in the *Koster* case. That case involved an action brought under a special venue statute which is a part of Section 51 of the Judicial Code²³ and which reads:

"except that suit by a stockholder on behalf of a corporation may be brought in any district in which suit against the defendant or defendants in said stockholders' action, other than said corporation, might have been brought by such corporation and process in such cases may be served upon such corporation in any district wherein such corporation resides or may be found."

That this is a special venue statute is evident not only from its wording but also from the following language which appears in Footnote 2 of the opinion in the *Koster* case:

"This reinforces the view that the cause of action is that of the corporation, if reinforcement is necessary. Moreover, it is obvious that the venue statute is not concerned with facilitating suit in the district of the stockholder's residence, but assures only that suit can be brought in any district in which the corporation can be sued. *Greenberg v. Giannini*, 140 Fed. (2) 550. When suit is brought in the district of the stockholder's residence, the venue statute does not provide for service on the corporation in any district wherein such corporation resides or may be found. Since the corporation is an indispensable party, *Davenport v. Dows*, 18 Wall. 626, it must be only the chance stockholder's suit which can be maintained at the stockholder's residence. Corporations which have stockholders in many of the states may not find it necessary to qualify to do business and consent to be sued in all the states in which they have stockholders."

It is quite evident that, if the *Gulf* case is interpreted as holding that the doctrine of *forum non conveniens* does not apply to actions brought under special venue statutes, the ruling in the *Koster* case does not accord with it. For, as already appears from what precedes, there the court, although dealing with a special venue statute, nevertheless applied the doctrine to the situation. The two decisions made on the same day, in opinions written by the same Justice, can be reconciled only if we read the teaching of the *Gulf* case as here suggested, namely, that the court refused to apply the doctrine of *forum non conveniens* to Federal Em-

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ployer's Liability cases, not because such cases are governed by a special venue statute, but for the reason that the history of the law, the desire of the Congress to overbalance the privileges under the law in favor of the railroad employes, made the choice under the particular venue statute absolute.

So the discussion which precedes may be summed up in 205 this manner:

The doctrine of inappropriate forum can be applied by courts in all cases in which it has been applied in the past in Anglo-American jurisprudence. And this should be done, whether dealing with a general or with a special venue statute. Only when the legislative history shows an intent to confer a right so absolute as to exclude any interference on the part of courts, are we justified in failing to give effect to this doctrine.

IV

THE VENUE HERE

We have already referred to the venue provision in the Sherman Anti Trust Act.³⁶ The power of the Congress to enact such provision is undisputed.³⁷ But there is nothing in its legislative history to indicate that the Congress, by giving to the Government a choice of forums, intended to deprive the courts of their right to forbid resort to an inappropriate forum.

That the Congress did not intend to make the Government's choice absolute is also evidenced by the provision of the Act which reads:³⁸

"Whenever it shall appear to the court before which any proceeding under Section 4 of this title may be pending, *that the ends of justice require* that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof." [Italics added.]

Had the Congress intended to give to the Government complete mastery over the situation, it certainly would not have made the presence of other parties dependent upon the determination by the court that the ends of justice require such presence. Of the nature of this power, a three-judge court said in *United States v. Standard Oil of New Jersey*:³⁹

"The question presented by the petition for that purpose was, not in which court the ends of justice required the complainant to choose to institute its suit, but whether or not in this suit the ends of justice required that the nonresident defendants should be brought in.

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"The exercise of the power conferred upon the courts by the Constitution and the acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of their process, is not discretionary with the courts, when a complainant demands it. It is an imperative duty, which may not be renounced, and whose discharge may not be evaded. It is the duty of a court of equity to finally determine the entire controversy before it, and to do complete justice by adjusting all the rights involved therein. Hence, in every suit in which the power to acquire jurisdiction of the subject-matter and of the parties is conferred upon the court, the duty is imposed upon it, if its discharge is invoked by the complainant, to summon and hear, before decision, not only every indispensable party, but every necessary party within reach of its process, every party who has an interest in the controversy, and who ought to be made a party to the suit in order that the court may finally adjudicate the whole matter, although if he were not amenable to process, final justice might be administered between the other parties without his presence."

In giving effect to public policy through suits of this character, courts are more likely to grant or withhold relief than in dealing with private interests.⁴⁰

That the facts in this case call for the application of the doctrine of *forum non conveniens* is apparent from the nature of the action and from the analysis of the facts presented in the affidavits which I made in the companion criminal prosecution.⁴¹ Practically, the same affidavits are before me now. They show that the trial of the case in this district would require the chief defendants to go to places distant from the location of their business, to bring witnesses from afar, to move into this district records which are located in distant cities where their headquarters are maintained, and, in case the decree asked for by the Government is made, it will call for control of foreign corporations over a long period of years by a court which is far removed from the principal places of business of the main defendants. Indeed, the very allegations of the Complaint indicate that National and American were the instrumentalities through which this monopoly is established, that they, especially National, are responsible for the tie-ins, through acquisition of stock by the suppliers, and for the monopolistic practices which they and not the local operating companies engineered with the suppliers and through which the throttling of competition in supplies and equipment, of which the Government complains, is achieved.

We should also emphasize the fact, already adverted to elsewhere in this opinion, that the Government by the decree it asks

⁴⁰Footnotes on pp. 145 and 146.

in this case, is seeking to wrest control of local transportation companies from National; American and Pacific and to require them to divest themselves of such control. And *this type of long distance control of corporations who are not engaged in business in the state* is one of the considerations which have led to the application of the doctrine of forum non conveniens.

The language of the court in *Williams v. Green Bay W. R. R.* is very apposite:⁴²

"We mention this phase of the matter to put the rule of forum non conveniens in proper perspective. It was designed as an 'instrument of justice.' Maintenance of a suit away from the domicile of the defendant—whether he be a corporation or an individual—might be vexatious or oppressive. An adventitious circumstance might land a case in one court when in fairness it should be tried in another. *The relief sought against a foreign corporation may be so extensive or call for such detailed and continuing supervision that that the matter could be more efficiently handled nearer home.*" [Italics added.]

Of the nine defendants, five—National, American, 207 Pacific, Mack, and Phillips—are not doing business in California and are not to be found in it. Federal Engineering merely makes investments for Standard, does no business in the district, and is not found in it. The control by National of the Los Angeles Transit Lines and of Long Beach City Lines, through ownership of their corporate stock, does not constitute "doing business" in the State.⁴³

It follows that the factual situation here calls for the application of the doctrine of forum non conveniens, in the interest of justice, just as the same facts in the companion criminal prosecution required its transfer to another district. And this conclusion is also commanded by the fact that the decree sought by the Government will require control of the parent-companies, National and American, over a long period of time, by a court far removed from their domiciles.

The Government has suggested that a dismissal of this Complaint might bring about an impossible situation. They refer to the fact that the principal places of business of the defendants are scattered throughout the country. And they express the fear that no matter where the Government reinstitutes its suit, some of the defendants might urge the application of the doctrine of inappropriate forum to them. The matter has received serious consideration. A court of equity should aim to balance societal and individual interests and to maintain the proper equilibrium between private rights and public weal.⁴⁴ And, in applying a statute like the Sherman Anti Trust Act embodying a Gov-

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ernmental policy of long standing, which aims to maintain in the economic field some semblance of equality and to prevent the hand of monopoly from suppressing or impeding the free flow of commerce between states, we should hesitate to adopt an approach to a problem like the one involved here which would result in quashing forever what the Government considers a meritorious suit.

But I feel that no disastrous result to the enforcement of the anti trust laws need, necessarily, follow a ruling adverse to the Government on this motion. Our action is reviewable on direct appeal to the Supreme Court,⁴⁵ within a maximum of sixty days after the entry of the final decree of dismissal. I am also of the view that this suit can be refiled in the Northern District of Illinois, Eastern Division, where National and American have their principal place of business, and withstand any further attack on venue. More, under date of September 18, 1947, counsel for all the defendants have joined in a letter in which they state that all the defendants believe that the Northern District of Illinois, Eastern Division, to which the companion criminal prosecution has already been transferred, is the proper forum for this action and that if this motion is granted and the suit is refiled there, the defendants will not move for its dismissal on the ground of inconvenient forum. At their request, the statement has been made a part of the record in this case.

In sum, whether the Government challenges this ruling and seeks a direct appeal to the Supreme Court within the sixty-day period, or, accepting it, refiles, the "set-back" will be temporary only. And the insuccess of the Government being based not on the court's disapproval of the social philosophy behind the Sherman Anti Trust Law,⁴⁶ but only on a disagreement as to the tactics in a particular case, which can be remedied readily, the Government's determination to enforce the statute vigorously will stand unaffected.

The motions to dismiss are granted.

Dated this 29th day of September 1947.

LEON R. YANKWICH, *Judge*.

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NOTES TO TEXT.

¹ United States v. National City Lines, et al., 1947, D. C. Cal., 72 Fed. Sup. —.

² Sec. 21 (b) Federal Rules of Criminal Procedure.

³ 15 U. S. C. A. 4.

⁴ Rogers v. Guaranty Trust Co., 1933, 288 U. S. 123, 131.

⁵ Virginian Ry. v. Federation, 1937, 300 U. S. 515, 552.

⁶ Langnes v. Green, 1931, 282 U. S. 531; Canada Malting Co. v. Paterson Co., 1932, 285 U. S. 413.

⁷ Kansas City Southern Ry. Co. v. United States, 1931, 282 U. S. 760, 763; Rogers v. Guaranty Trust Co., 1932, 288 U. S. 123; Virginian Ry. v. Federation, 1937, 300 U. S. 515; Massachusetts v. Missouri, 1939, 308 U. S. 1, 19.

⁸ Langnes v. Green, 1931, 282 U. S. 531.

⁹ Rogers v. Guaranty Trust Co., 1932, 288 U. S. 123.

¹⁰ Williams v. Green Bay & W. R. Ry. Co., 1946, 326 U. S. 549; Gulf Oil Corporation v. Gilbert, 1947, 330 U. S. 501; Koster v. Lumbermen's Mutual Co., 1947, 330 U. S. 519.

¹¹ See cases in Notes 7 and 8.

NOTES TO TEXT—Continued

²² 28 U. S. C. A. 112 (a) and (b).

²³ See cases in Notes 7 and 8. And see, *Nairbro Co. v. Bethlehem Shipbuilding Corporation*, 1939, 308 U. S. 165.

²⁴ 17 U. S. C. A. 85.

²⁵ 28 U. S. C. A. 109. The language of Mr. Justice Brandeis in *Lumière v. Wilder, Inc.*, 1923, 261 U. S. 174, 177, lends support to the view here expressed as to what a special venue statute is. Speaking of the special venue provision in copyright cases, he says:

"Ordinarily a civil suit to enforce a personal liability under a Federal statute can be brought only in the district of which the defendant is an inhabitant. Judicial Code, §51. In a few classes of cases, a carefully limited right to sue elsewhere has been given. In patent cases it is the district of which the defendant is an inhabitant or in which acts of infringement have been committed and the defendant has a regular and established place of business. Judicial Code, §48; *W. S. Tyler Co. v. Ludlow-Saylor Co.*, 236 U. S. 723. In cases under the antitrust laws, it is where the defendant 'resides or is found or has an agent'; (Act of October 15, 1914, c. 323, §4, 38 Stat. 730, 734); and in the case of corporations, the 'district whereof it is an inhabitant' or 'any district wherein it may be found or transacts business.'"

²⁶ 28 U. S. C. A. 105. The United States Court of Appeals for the District of Columbia has held that the doctrine of *forum non conveniens* is applicable to an action of this character. See *Urquhart v. American-La France Fournille Corporation*, 1944, 144 F. (2) 542, 544.

²⁷ 15 U. S. C. A. 77 (2).

²⁸ 28 U. S. C. A. 112 (a).

²⁹ 45 U. S. C. A. 56.

³⁰ 15 U. S. C. A. 22.

³¹ *United States v. Standard Oil Co.*, decided on July 13, 1947, 72 Fed. Sup. —.

³² *Gulf Oil Co. v. Gilbert*, 1947, 330 U. S. 501.

³³ *Baltimore & Ohio Ry. v. Kepner*, 1941, 314 U. S. 44; *Miles v. Illinois Central Ry.*, 1942, 315 U. S. 698.

³⁴ *Koster v. Lumbermen's Mutual Co.*, 1947, 330 U. S. 519.

³⁵ *Baltimore & Ohio Ry. v. Kepner*, 1941, 314 U. S. 44.

³⁶ *Miles v. Illinois Central Ry.*, 1942, 315 U. S. 698.

³⁷ The following are among the Circuit Court cases in which the doctrine has been expounded: *Schenkel v. McGree*, 1924, 300 Fed. 273; *Southern Ry. v. Cochran*, 1932, 56 F. (2) 1019; *Wood v. Delaware & H. R. Corporation*, 1933, 2 Cir., 63 F. (2) 255; *Chesapeake & Ohio Ry. v. Vigor*, 1937, 6 Cir. 90 F. (2) 7; *Southern Ry. Co. v. Painter*, 1941, 8 Cir. 117 F. (2) 100, 103, 106; and see, *Leet v. Union Pacific Co.*, 1944, 25 Cal. (2) 605, 609-610.

³⁸ See Thomas B. Gray, *Venue of Actions*, 33 American Bar Association Journal, July 1947, page 659.

³⁹ See the language of the late Judge Grover L. Moskowitz in *Sacco v. Baltimore & Ohio Ry. Co.*, 1944, D. C. N. Y., 56 Fed. Sup. 959.

⁴⁰ H. R. 1639.

⁴¹ *Missouri Pacific Ry. v. Ault*, 1921, 256 U. S. 554; *Alabama etc. Ry. Co. v. Journey*, 1921, 257 U. S. 111.

⁴² *Miles v. Illinois Central Ry.*, 1942, 315 U. S. 698.

⁴³ 28 U. S. C. A. 112.

⁴⁴ *Koster v. Lumbermen's Mutual Co.*, 1947, 330 U. S. 519.

⁴⁵ See cases in Notes 7 and 8.

⁴⁶ 15 U. S. C. A. 22.

⁴⁷ *Eastman Kodak Co. v. Southern Photo Co.*, 1927, 273 U. S. 359.

⁴⁸ 15 U. S. C. A. 5.

⁴⁹ 152 Fed. 290, 296. Counsel for the Government seem to think that this case teaches that the doctrine of *forum non conveniens* does not apply to antitrust cases. I do not so read it. It is to be borne in mind that the court was not asked to dismiss the action because of the choice of inappropriate forum. An order had been made by the Circuit Court to bring in the nonresident defendants. They moved to vacate the order and to quash the service of summons upon them. The court having exercised its judgment, having granted the order, and having determined that the ends of justice required the presence of the nonresident defendants, the matter was at an end. And the reviewing court, as the first sentence of the quotation says distinctly, was not determining in which court the ends of justice required the complainant to institute its suit, but whether the ends of justice required that other defendants be brought in. Clearly then, the question which confronts us here was not before the court in that case, and the ruling in it does not help the position of the Government in this case.

⁵⁰ *Virginian Ry. v. Federation*, 1937, 300 U. S. 515, 552.

⁵¹ *United States v. National City Lines, et al.*, 1947, D. C. Cal., 72 Fed. Sup. —.

⁵² 326 U. S. 550.

⁵³ *Peters v. Chicago etc. Ry.*, 1907, 205 U. S. 364; *Philadelphia etc. Ry. v. McKibbin*, 1917, 243 U. S. 264; *People's Tobacco Co. Ltd. v. American Tobacco Co.*, 1917, 246 U. S. 79, 87.

⁵⁴ *Roscoe Pound, A Survey of Social Interests*, 1943, 57 *Harvard Law Review*, 1-39; *Roscoe Pound, Law and the State, Jurisprudence and Politics*, 1944, 57 *Harvard Law Review* 1193 et seq.; *Roscoe Pound, A Survey of Public Interests*, 1945, 58 *Harvard Law Review*, 909-929.

⁵⁵ 15 U. S. C. A. 29.

⁵⁶ My attitude towards this law has been expressed in the following opinions: *United States v. Heating, Piping & Air Cond. Assn.*, 1940, D. C. Calif., 33 Fed. Sup. 978; *United States v. Food and Grocery Bureau*, 1942, D. C. Calif., 43 Fed. Sup. 966; *United States v. Food and Grocery Bureau*, 1942, D. C. Calif., 43 Fed. Sup. 974; *United States v. San Francisco Electrical Contractors Assn.*, 1944, D. C. Calif., 57 Fed. Sup. 57.

211 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Government's objections to proposed findings of fact and conclusions of law

Filed Oct. 15, 1947.

Objections considered. Allowed in part at open hearing.—
L. R. Y. J.

This memorandum is filed pursuant to Rule 7 (a) of the Rules of the District Court of the United States for the Southern District of California and states the Government's position with respect to proposed findings of fact and conclusions of law filed with this honorable Court by all defendants on October 10, 1947. This memorandum will state the Government's objections and contentions with respect to each of the paragraphs complained of in the defendants' proposed findings of fact.

1. Paragraph 2 of Defendants' Proposed Findings

212 There should be added to Paragraph 2 of the defendants' proposed findings the following sentence: "Defendants National and Pacific control and manage operating subsidiaries in the Southern District of California including subsidiaries in the Cities of Glendale, Pasadena, Los Angeles, and Long Beach, but such control and management of said operating subsidiaries does not constitute doing business in this District."

2. Paragraph 4 of Defendants' Proposed Findings

The second sentence in Subparagraph (a) of the defendants' proposed findings should be amended to read as follows:

"Such agreements were negotiated by the chief executive officers of the various corporations and an undetermined number of such agreements were negotiated and entered into in Chicago."

It is the Government's contention that the combination and conspiracy charged consists of a large number of agreements entered into, both within and outside of the City of Chicago, including a large number of understandings reached by the defendants and their agents within the State of California.

The Government contends that Subparagraph (d) of Paragraph 4 of the defendants' proposed findings constitutes an improper attempt to frame the substantive issues of the trial in a purely

procedural motion. It constitutes an improper attempt to evaluate the evidence pertinent to the substantive issues in advance of its being offered. No answer has been filed. The Government holds, therefore, that such a finding of fact is wholly improper. However, if the evidence is to be evaluated, the findings of fact should reflect the contentions of both the plaintiff and the defendant with respect to the evidence to be offered. If the Court so holds, the Government maintains that Subparagraph (d) of Paragraph 4 should be amended to read as follows:

213 "The defendants have made the following analysis of the evidence to be offered at the trial. The essential matters to be tried will be the organization of National in Chicago in 1936; its growth and operation; its relationships and contracts with the supplier defendants and other suppliers, all of which took place in or stemmed from Chicago; the financing of National in and from Chicago; and the purchase of and direction and supervision of operating companies, all of which took place in and from Chicago. All these matters involve decisions and determinations made, on the highest management level, by executive officers of National and the supplier defendants in and about Chicago and the home offices of the suppliers. The essential testimony as to all these fundamental policies, decisions, and transactions must come from the executive officers of National and the supplier defendants, all of whom reside and have their place of business far from this district. The relevant documentary proof must come from the records maintained at the home office of all these companies, all of which are far removed from this district."

"The corresponding analysis by the Government of the evidence to be offered at the trial is substantially as follows: The essence of the offense is the conspiracy, a large part of the proof of which is to be found in the application of the restraints
214 resulting therefrom. Restraints resulting from the aforesaid alleged combination and conspiracy were effectuated principally by two men, one of whom is W. R. Fitzgerald of Los Angeles, Vice President and Operating Manager of defendant National. Said restraints, which are evidence of the conspiracy itself, were effectuated on the Pacific Coast on a scale greater than any other section of the country in which the defendants conduct their operations. To prove such restraints, the Government expects to offer evidence from the files of subsidiaries of defendants National and Pacific, as well as from the files of defendants Standard and Federal within the State of California. The Government contends that in proving the conspiracy it expects to call a substantial number of witnesses from the Pacific Coast area and States adjacent thereto."

3. Paragraph 5 of Defendants' Proposed Findings

The Government contends that the following sentence should be added to Paragraph 5 of the defendants' proposed findings of fact: "All of the nine corporations named in the Complaint are primary defendants."

4. Paragraph 6 of Defendants' Proposed Findings

The Government contends that all of the corporations named in the complaint are primary defendants and that there is not enough evidence in the record to determine in advance of trial that "the head and front of the offending" is limited to the defendants National, American and Pacific.

5. Paragraph 7 of Defendants' Proposed Findings

215 With respect to Subparagraph 4 of the defendants' proposed finding Number 7, the Government contends that there is not enough evidence in the record to sustain the finding that the operating subsidiaries of defendants National, American and Pacific are not coconspirators and, therefore, this finding should be eliminated.

The Government likewise holds that there is not sufficient evidence in the record to sustain a finding that the agreements by which the conspiracy was accomplished were negotiated by the defendants wholly outside of this District. Moreover, the Government believes that the findings should state explicitly that a number of agreements by which the conspiracy was accomplished were negotiated in the State of California.

The Government also contends that the following statement should be deleted from proposed finding Number 7: "The location of the operating companies has no bearing whatsoever on the question of the convenient forum."

6. Paragraph 10 of Defendants' Proposed Findings

The Government contends that the record does not sustain a finding that "no substantial hardship will be borne by the Government if trial of this case is held in Chicago."

7. Paragraph 12 of Defendants' Proposed Findings

With respect to the second paragraph of the defendants' proposed finding Number 12, it is not true that the affidavit of Jesse R. O'Malley filed in the criminal case is identical with the affidavit filed on behalf of the United States in this equity suit. The affidavit in the criminal case stated that the majority of the

witnesses who appeared before the Grand Jury were from Pacific Coast and adjacent States and that a great volume of documentary material was subpoenaed by said Grand Jury from the defendants Federal, Standard and Pacific within the State of California as well as from operating subsidiaries of defendant National and American within the State of California.

216 With respect to Paragraph 2 of the defendants' proposed finding Number 12, the Government contends that there is no support in the record of a finding that the facts developed in the first case to be tried may be stipulated to a large extent in the second trial. The essence of the criminal proceedings is the guilt of the individual and corporate defendants. In the civil proceedings the question of relief is of equal importance to the issue of guilt. It is therefore probable that there will be a considerable difference in emphasis between the civil and criminal proceedings.

8. Paragraph 13 of Defendants' Proposed Findings.

For the record, it should be stated that the Government does not concur in the finding that the interests of justice require that this suit be dismissed.

9. Conclusions of Law

For the record, it should be stated that the Government does not concur in the proposed conclusions of law.

Dated October 14, 1947.

Jesse R. O'Malley,
JESSE R. O'MALLEY,
Special Attorney.

217 In the District Court of the United States in and for the Southern District of California, ——— Division

No. Civil 6747-Y

UNITED STATES OF AMERICA, PLAINTIFF

v.

———, DEFENDANT

AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES OF AMERICA,

Southern District of California, ss:

Yarmilla Vencel, being first duly sworn, deposes and says:

That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (her) business address is

1602 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on October 14, 1947—(s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Government's Objections to Proposed Findings of Fact and Conclusions of Law. Jackson W. Chance, O'Melveny & Myers; Oscar Trippet, Haight, Trippet & Syvertson; T. B. Cosgrove, Cosgrove, Clayton, Cramer & Diether; Hubert T. Morrow, Bennett, Finlayson & Morrow; Charles E. Millikan, Wright & Millikan; John M. Hall, Lawler, Felix & Hall, addressed to their last known address, at which place there is a delivery service by United States Mails from said post office.

YARMILLA VENCEL

Subscribed and sworn to before me, this 14 day of Oct. 1947.

Clerk, U. S. District Court,
Southern District of California.

By THEODORE NOCKE,

Deputy.

[SEAL]

218 In the District Court of the United States for the
Southern District of California, Central Division

No. 6747-Y Civil

[File endorsement omitted:]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC
CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL
MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK
MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF
CALIFORNIA, FEDERAL ENGINEERING CORPORATION, DEFENDANTS

Findings of fact and conclusions of law

Filed Oct. 15, 1947

This matter came on for hearing on September 15, 1947, before the Honorable Leon R. Yankwich, United States District Judge, on the motions of the respective defendants to dismiss the cause on the ground that this Court is an inconvenient forum in which to try this cause; plaintiff being represented by Tom C. Clark, Attorney General of the United States, John F. Sonnett, As-

Assistant Attorney General, William C. Dixon, Special Assistant to the Attorney General, Robert L. Rubin, Special Assistant to the Attorney General, James E. Kilday, Special Assistant to the Attorney General, Jesse R. O'Malley, Special Attorney, Leonard M. Bessman, Special Attorney, and James M. Carter, United States Attorney; defendants National City Lines, Inc., American City Lines, Inc., and Pacific City Lines, Inc., being represented by Hodges, Reavis, Pantaleoni & Downey, New York, O'Melveny & Myers, Louis W. Myers, Pierce Works, Jackson W. Chance, Los Angeles, California; defendant Firestone Tire & Rubber Company being represented by Joseph Thomas, Akron, Ohio, Haight, Trippet & Syvertson, Oscar A. Trippet, Frank B. Yoakum, Jr., Los Angeles, California; defendant General Motors Corporation being represented by Cosgrove, Clayton, Cramer & Diether, T. B. Cosgrove, Leonard A. Diether, Los Angeles, California; defendant Phillips Petroleum Company being represented by Finlayson, Bennett & Morrow, H. T. Morrow, Los Angeles, California; defendant Mack Manufacturing Company being represented by Wright & Millikan, Loyd Wright and Charles E. Millikan, Los Angeles, California; and defendants Standard Oil Company of California and Federal Engineering Corporation being represented by Lawler, Felix & Hall, John M. Hall, Los Angeles, California; affidavits and reply affidavit having been filed by the moving parties and counter-affidavit having been filed on behalf of plaintiff; the matter having been orally argued; written memoranda of points and authorities having been filed on behalf of all parties; the cause having been taken under submission; and the Court having duly considered the facts and the law, now makes the following

Findings of fact

1. The State of organization of each defendant and the principal place of business of each is as follows:

220 Corporation	State of organization	Principal place of business
National City Lines, Inc.	Delaware	Chicago, Illinois.
American City Lines, Inc.	Delaware	Chicago, Illinois.
Pacific City Lines, Inc.	Delaware	Oakland, Calif.
Standard Oil Company of California	Delaware	San Francisco, Calif.
Federal Engineering Corporation	California	San Francisco, Calif.
Phillips Petroleum Company	Delaware	Bartlesville, Okla.
General Motors Corporation	Delaware	Detroit, Michigan.
Firestone Tire & Rubber Company	Ohio	Akron, Ohio.
Mack Manufacturing Corporation	Delaware	New York.

2. None of the defendants herein were doing business or were found in this District when this suit was brought, except defendants Standard, General Motors, and Firestone.

3. In substance, the Government alleges in its complaint the following:

(a) National and its subsidiaries, American and Pacific, own and control, or have a substantial financial interest in, corporations which are referred to as "operating companies," and which are engaged in providing local transportation service in more than 42 cities in 16 states;

(b) The operating companies of the defendants National, American, and Pacific use large quantities of busses, tires, tubes, and petroleum products, which are manufactured and handled by the supplier defendants, Phillips, Standard, General Motors, Mack, and Firestone;

(c) Beginning on or about January 1, 1947, and continuing to the filing of the Complaint on April 10, 1947, the defendants have engaged in an unlawful combination and conspiracy to acquire ownership, control, or a substantial financial interest in a substantial part of local transit companies in various cities, towns, and counties in various States of the United States and "to restrain and to monopolize the aforesaid interstate commerce in motorbusses, petroleum products, tires, and tubes sold to local transportation companies in cities, counties, and towns in which National, American, and Pacific have, or have acquired, or in the future acquire, ownership, control, or a substantial financial interest in said local transportation companies, all in violation of Sections 1 and 2 of the Sherman Anti-Trust Act. Defendants threaten to and will continue to violate Sections 1 and 2 of the Sherman Anti-Trust Act unless the relief hereinafter prayed for is granted";

(d) The means of achieving this result are stated in the complaint to be these: Supplier defendants have furnished money and capital to National, American, and Pacific who have, in turn, caused their operating companies to purchase practically all their requirements in tires, tubes, petroleum products, and busses from the supplier defendants to the exclusion of products competitive with them; money made available by the supplier defendants was used to acquire control of local transit companies through the operating companies; National, American, and Pacific would not renew contracts with others for the purchase or rental of materials and equipment without the consent of the supplier defendants; when an operating company was sold, National, American, and Pacific would require the new owner to assume the burden of the contracts for the exclusive purchase of equipment and supplies; no change of type of equipment or conversion to another type would take place without the consent of the supplier defendants; and the business of dealing in such

C

supplies and equipment would be allocated to the supplier defendants in an artificial, arbitrary, and uncompetitive manner;

(e) The effect of the combination and conspiracy is to eliminate competition from other suppliers in the sale of supplies and equipment to National, American, and Pacific and their operating companies, and to restrain interstate commerce in such equipment substantially and unreasonably, so far as the transportation companies controlled by National, American, and Pacific are concerned, to charge noncompetitive prices for such equipment and to allocate nation-wide markets of the defendants National, American, and Pacific and their operating companies for supplies and equipment between the various supplier defendants;

(f) The Government seeks a decree declaring that the defendants are engaged in a conspiracy in violation of the Sherman Act, that the supplier defendants be required to divest themselves of stock and other interests in the traction companies, that contracts between the parties be declared void, and that the traction
223 and operating companies be enjoined from acquiring their equipment from the suppliers. In addition to this, the following more specific prayers are included in the Complaint which are set forth in full because of their significance in these findings:

"4. That the defendants National, American, and Pacific, and their operating companies be perpetually enjoined from purchasing or otherwise acquiring any motorbusses, tires, tubes, and petroleum products used or consumed by said defendants or their operating companies without first advertising for competitive bids for such supplies, said advertising and competitive bidding to be pursuant to and under a plan to be incorporated into and made a part of any final order entered by the Court in this case;

"5. That the defendants National, American, and Pacific be ordered to make such disposition of their interests and holdings in local transportation companies as is necessary to restore competition and to dissipate the effects of the unlawful conspiracy; and that defendants National, American, and Pacific be permanently enjoined from acquiring, directly or indirectly, any financial interest in any local transportation system operating in any city, town, or county of any State of the United States without first obtaining the approval and authority of this Court;

"6. That the defendants herein and each of them and
224 their officers, directors, and representatives and all persons and corporations acting or claiming to act on behalf of them be perpetually enjoined and restrained from combining and conspiring to monopolize or to restrain interstate trade and commerce of the United States in the manner and by the means described herein, and be perpetually enjoined from engaging in or

participating in agreements, understandings, practices, or arrangements having a tendency to revive or continue any of the aforesaid violations of the Sherman Anti-Trust Act."

4. The basic transactions and relationships upon which the complaint seems to be based are the following:

(a) National in 1939 and American City Lines, Inc. (organized in 1943) in 1943 and 1944 made certain agreements with the suppliers under which they provided money to National or American against their securities. (Complaint, pars. 21 and 22.) Such agreements were negotiated by the chief executive officers of the various corporations, and were principally agreed upon in Chicago. These agreements were executed in Chicago by National or American and were severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard). The stock of National or American so purchased was paid for and delivered in Chicago. When American was merged into National in 1946,

225 a merger whose terms were negotiated in Chicago, the stock of American previously purchased by certain of the suppliers was exchanged for stock of National.

(b) National in 1939 and American in 1943 and 1944 made certain agreements with the suppliers to purchase certain supplies. (Complaint, pars. 21 and 22.) Such agreements were executed by the chief executive officers of the various companies in Chicago and were principally agreed upon in Chicago. After each contract was approved it was executed by National or American in Chicago and then severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard).

(c) National has always been managed from Chicago. All investigations respecting transit properties in the United States and the purchase of interests in transit properties were directed from Chicago by National and American. All important policies and decisions in connection with the purchase of interests in operating companies were made by National or American in Chicago.

(d) The essential matters to be tried from the standpoint of the defendants will be the organization of National in Chicago in 1936; its growth and operation; its relationships and contracts with the supplier defendants and other suppliers, all of which took place in or stemmed from Chicago; the financing of National in and from Chicago; and the purchase of and direction and supervision of operating companies, all of which took place in and from Chicago. All these matters involve decisions

226 and determinations made, on the highest management level, by executive officers of National and the supplier defendants in and about Chicago and the home offices of the suppliers. The essential testimony as to all these fundamental policies, decisions, and transactions must come from the executive officers of National and the supplier defendants, all of whom reside and have their place of business, far from this district. The relevant documentary proof must come from the records maintained at the home office of all these companies, all of which are far removed from this district.

The trial of the case in this District would require the officers, agents, and employees of the defendants to go to places far distant from the location of their business, to bring witnesses from afar, to move into this District records which are located in distant cities where their headquarters are maintained.

5. In case the decree asked for by the Government is made, it will call for control of foreign corporations over a long period of years by a court which is far removed from the principal places of business of the main defendants:

6. The allegations of the Complaint charge in effect that National and American were the instrumentalities through which this alleged monopoly is established; that they, especially National, are allegedly responsible for the tie-ins, through acquisition of stock by the suppliers, and for the alleged monopolistic practices which they and not the local operating companies allegedly engineered with the suppliers and through which the alleged throttling of competition in supplies and equip-
227 ment, of which the Government complains, is achieved.

It is apparent from the Complaint that plaintiff claims that "the head and front of the offending" is National and its subsidiaries American and Pacific, and especially National, which owns and controls the two others. National has its main place of business in Chicago, Illinois. All its records are located there. Its thirty-four operating subsidiaries, which operate transportation systems in various cities, are operated and controlled from Chicago. The transactions, which form the basis of the Complaint, took place chiefly in Chicago. The agreements with the other defendants, which the Government alleges had the unlawful monopolistic effect and which are the gist of the offense, were negotiated in Chicago over a long period of years. The trial of the action—as appears from the affidavits of E. Roy Fitzgerald—would require the attendance over a period of months of some of its keymen. This would result in a complete dislocation of its business at the place where it can least afford it—at the central place of control. The same conditions exist as to

the other nonresident defendants, the suppliers, such as Firestone, General Motors, Mack, and Phillips—that is, location of its chief business outside of the Southern District of California, nonresidence of executive officers and men in managerial positions who are needed as witnesses, books, and records kept outside the District, agreements entered into without the District and greater proximity to Chicago, Illinois, than to Los Angeles, California.

It is essential for the protection of defendants, including Standard and Federal (the main places of business of Standard and Federal being in San Francisco, California, outside of this District) that this case be tried at a location where
228 the evidence to refute this alleged conspiracy may be produced with the latest diminution or impairment, which place is Chicago, Illinois.

7. It is true, as the Government's affidavit asserts, that subsidiaries of National, Pacific, Mack, and each of the other defendants, excepting Phillips and Federal, conduct operations in this State; but the Court finds that those circumstances are unimportant and immaterial on the issue now before the Court, which is whether or not the interests of justice require dismissal of this cause on the ground of inconvenient forum.

The counteraffidavit filed on behalf of the Government does not deny the facts relating to National and to the other nonresident defendants. In substance, it asserts that many of the Government witnesses are local and that many documents it received were supplied locally. However, the documentary and other proof to be presented by the defendants is not available locally. Acts and contemporaneous declarations of the defendants, unrevealed by the Government's documentation, may change entirely the complexion of the case. The Government is not in a position to say that it has in its possession and can produce through witnesses and documentary evidence locally available all the facts bearing on the intent of the defendants. If it be assumed that the Government does not need and will not produce witnesses or documents located outside of California, the fact is that the defense of the defendant companies will be grounded on the testimony of witnesses who will have to be taken away from their head offices and on documentary evidence and company records which will have to be transported to this district. Firestone alone estimates that sixteen of its officers, executives,
229 or members of its managerial staff, residents of Akron and Chicago, may be needed as witnesses in the case.

The Government's affidavit lays much stress on the fact that the local operating subsidiary enjoys a measure of local control and that the largest restraint in the free flow of products resulted

from the acquisition of the local transportation system. The emphasis placed on the size of the Los Angeles transaction in the Government's affidavit and at the oral argument does not conform to the pattern of the Complaint.

Although the counters affidavit filed on behalf of the Government states that the transportation system acquired in Los Angeles is the largest controlled by the system, nevertheless, none of the operating subsidiaries in California, in or out of Los Angeles County, are named parties defendant. Nor are they designated as conspirators, as is sometimes done in cases of this character when the Government chooses to bring suit against certain of the alleged conspirators only. They are merely vehicles through which the channeling of petroleum products, tires and other equipment was achieved. The agreements by which this was accomplished were negotiated by the defendants outside of this district. Although one overt act is alleged to have occurred in the district, in a suit of this character, an overt act is not necessary. The agreement is the essence of the charge. And the proof of that agreement lies in the actions of the controlling companies—National and the large suppliers—who are alleged to have agreed and conspired with them, regardless of the location of the operating

companies to whom the products were supplied, as a result
230 of this agreement. The transportation system in Los Angeles is only one of more than 40 operations in other cities in which National is interested, and this interest in Los Angeles was acquired only in 1945, more than eight years after the alleged commencement of the concert of action in 1937.

8. This suit, if maintained in this District, would compel the defendants (1) to go to a place distant from the location of their business; (2) to employ or bring counsel to a distant city; (3) to bring witnesses from afar; (4) their business headquarters are in another city; (5) most of the records which relate to the transaction on which the Complainant is based are there. Under the circumstances (6) fairness would be absent and (7) the defendants would be put to unjustifiable expense, and (8) the United States District Court for the Northern District of Illinois, Eastern Division, would be deprived of its rightful jurisdiction.

A trial in this District would impose unnecessary hardships on the defendants and entail unjustifiable expense which it is in the interest of justice to avoid.

9. The Government by the decree it asks in this case is seeking to wrest control of local transportation companies from National, American, and Pacific, and to require them to divest themselves of such control. The decree sought by plaintiff will require control and administrative supervision by the Court of the parent

companies, National and American, over a long period of time. The detailed and continuing supervision and control of said defendant corporation, can be much more efficiently handled
231 by the Federal District Court at the domiciles of said defendant corporations, rather than by this Court far removed from the domiciles of said corporations.

10. This suit can be refiled in the Northern District of Illinois, Eastern Division, where National and American have their principal place of business, and will there withstand any further attack on venue or on grounds of inconvenient or inappropriate forum, as counsel for all the defendants have joined in a writing stating that all the defendants believe that the Northern District of Illinois, Eastern Division (Chicago) to which the companion criminal proceeding has already been transferred, is the proper forum for this action and that if the suit is refiled there, the defendants will not move for its dismissal on the ground of inconvenient forum, and, at their request, said statement has been made a part of the record in this case. The Government has an office of the Anti-Trust Division of the Department of Justice located in Chicago, Illinois, and no substantial hardship will be borne by the Government if trial of this case is held in Chicago.

11. Plaintiff made no application to the Court for any order under Section 5 of the Sherman Act that the ends of justice required an order bringing in the nonresident defendants who were neither transacting business nor were found in the Southern District of California; and the Court has made no finding or determination that the ends of justice required such defendants to be brought in and made parties to this suit.

12. A criminal indictment was returned in the above entitled Court, being proceeding No. 19270, Criminal, against
232 each of the defendants named in this equity suit. Said indictment was returned on the same date that the Complaint in this equity suit was filed. The transactions complained of and the charges made in the indictment in said No. 19270 are the same as those alleged in the Complaint on file herein. The allegations of the Complaint on file herein are substantially the same as the charges of the indictment in said criminal proceeding. The corporate defendants in said criminal proceedings are identical with the corporate defendants named in the Complaint on file herein.

On July 14, 1947, a motion to transfer said criminal proceeding to the United States District Court for the Northern District of Illinois, Eastern Division (Chicago) was presented to this Court in Criminal No. 19270, pursuant to the Rules of Criminal Procedure, Rule 21 (b). An affidavit of E. Roy Fitzgerald, President

of defendant National, was filed in support of said motion, setting forth identically the same facts that are set forth in the affidavit of said E. Roy Fitzgerald filed in this suit in support of the motion to dismiss on the grounds of forum non conveniens. The counteraffidavit of Jesse O'Malley, one of the attorneys for the United States in said Criminal No. 19270, was filed therein in reply to said affidavit of said E. Roy Fitzgerald and in opposition to said motion to transfer; said counteraffidavit of Jesse O'Malley being substantially the same (except for such transpositions as were made necessary by the difference between the two proceedings) with the affidavit filed herein by him on behalf of the United States in this equity suit. An answering affidavit of E. Roy Fitzgerald was also filed in support of said motion to transfer, a copy of which was filed herein in answer to said counteraffidavit of

233 Jesse O'Malley herein. After briefing and oral argument and on August 14, 1947, this Court rendered its written opinion in said Criminal No. 19270 and made and entered an order determining that in the interests of justice said criminal proceedings should be transferred to and tried in the United States District Court for the Northern District of Illinois, Eastern Division (Chicago) and ordered said proceedings transferred to the said District Court at Chicago, Illinois, and said proceeding was so transferred to and is now pending in said District Court in Chicago. To try said criminal proceeding in Chicago, Illinois, and also to try this civil equity suit in Los Angeles, California, would cause great hardship and inconvenience, would entail substantial additional expense to the defendants of employing and familiarizing two sets of local defense counsel with the very extensive and complicated facts involved in the two proceedings, one group of attorneys in Chicago to prepare and try the criminal proceeding, and the other group of attorneys in Los Angeles to prepare and try this civil suit. If said criminal proceeding and this equity suit are tried in different courts, one in Chicago and the other in Los Angeles, both sets of counsel will have to be furnished with copies of all the numerous papers, records and documents which relate to and have a material bearing on the matters complained of; considerable time would have to be

234 spent by both sets of counsel in studying and fully understanding these documents; both sets of counsel would have to be made thoroughly familiar with the details and ramifications of the businesses of the various defendants and of the business

dealings and relations which the various defendants had with each other from 1937 to date; both sets of counsel would have to confer from time to time over substantial periods of time with the numerous executives and key employees of defendants whose testimony may be material and relevant at the trials of both actions; and, in short, the entire preparation for trial would have to be duplicated. Duplication of effort would be financially costly to the defendants, as it would require substantially twice the amount of time to be spent in preparing the two actions for trial than would be required if both actions were tried in one jurisdiction. This duplication of effort would also require additional time of the many officers and employees of the defendants familiar with the transactions complained of, which time would have to be taken from the regular, normal corporate activities of the defendants. All of this duplication of effort and expense would be avoided by having the criminal proceeding and this suit tried in the same court. It would not be in the interests of justice to have the criminal proceeding tried in Chicago and this equity suit tried in Los Angeles, and the two actions should be tried in the same court.

13. The interests of justice require that this suit be dismissed without prejudice to its being refiled in the more appropriate and convenient forum.

235 From the foregoing Findings of Fact, the Court makes the following

Conclusions of law

1. This Court is an inconvenient and inappropriate forum in which to maintain this suit.

2. The interest of justice require that this suit be dismissed without prejudice to the plaintiff commencing a similar suit against these defendants in a more appropriate and more convenient forum.

Let judgment be entered accordingly.

Done in open court this 15th day of October 1947.

LEON R. YANKWICH,

United States District Judge.

[Strike out two of the following:]

(1) Approved as to form.

(2) Disapproved as to form.

(3) Receipt of copy of the foregoing findings and conclusions acknowledged this 10th day of October 1947, at 11:30 o'clock, A. M.

TOM C. CLARK,
Attorney General of the United States.
 JOHN F. SONNETT,
Assistant Attorney General.
 WILLIAM C. DIXON,
Special Assistant to the Attorney General.
 ROBERT L. RUBIN,
Special Assistant to the Attorney General.
 JAMES E. KILDAY,
Special Assistant to the Attorney General.
 JESSE R. O'MALLEY,
Special Attorney.
 LEONARD M. BESSMAN,
Special Attorney.
 JAMES M. CARTER,
United States Attorney.
 By J. R. O'MALLEY,
 L. M.
Attorneys for Plaintiff.

Accept service of corrected pages 7, 8, 12, 15, & 16

J. R. O'MALLEY.

236 In the District Court of the United States for the Southern District of California, Central Division

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, FEDERAL ENGINEERING CORPORATION, DEFENDANTS

Judgment of dismissal

Oct. 15, 1947

Findings of Fact and Conclusions of Law having heretofore been signed by the Court, and good cause appearing therefor,

It is hereby ordered, adjudged, and decreed that the above entitled cause be and the same hereby is dismissed without

237 prejudice to commencement of a similar suit against defendants named herein in a more appropriate and more convenient forum.

It is further ordered that the motion for a more definite statement or bill of particulars and the motion to quash as to defendant American City Lines, Inc., be and each of them, is hereby denied without prejudice to the renewal thereof.

Done in open court this 15th day of October 1947.

LEON R. YANKWICH,
United States District Judge.

[Strike out two of the following:]

~~(1) Approved as to form.~~

~~(2) Disapproved as to form.~~

(3) Receipt of copy of the foregoing Judgment of Dismissal acknowledged this 10th day of October 1947, at 11:30 o'clock A. M.

TOM C. CLARK,
Attorney General of the United States.

JOHN F. SONNETT,
Assistant Attorney General.

WILLIAM C. DIXON,
Special Assistant to the Attorney General.

ROBERT L. RUBIN,
Special Assistant to the Attorney General.

JAMES E. KILDAY,
Special Assistant to the Attorney General.

JESSE R. O'MALLEY,
Special Attorney.

LEONARD M. BESSMAN,
Special Attorney.

JAMES M. CARTER,
United States Attorney.

By J. R. O'MALLEY,
L. M.
Attorneys for Plaintiff.

Judgment entered Oct. 15, 1947. Docketed Oct. 15, 1947.
C. O. Book 46. Page 361.

EDMUND L. SMITH,
Clerk.

JOHN A. CHILDRESS,
Deputy

238 In the District Court of the United States for the
Southern District of California, Central Division

[File endorsement omitted.]

[Title omitted].

Completion of record

Filed Nov. 4, 1947

In the affidavit filed by Jackson W. Chance in the instant suit on August 28, 1947, the following language was used in the final paragraph (page 2, lines 21 to 27, inclusive):

"The motion to transfer, the affidavit of E. Roy Fitzgerald in support thereof, the counter affidavit of Jesse O'Malley in opposition to said motion, the reply affidavit of E. Roy Fitzgerald in support thereof, the several memoranda of points and authorities in support of and in opposition to said motion, and the minutes of the Court in connection with said motion and Order, all in
239 said criminal proceedings No. 19270, are by this express reference thereto hereby incorporated herein and made a part hereof as fully as though set forth at length herein."

Although the Chance affidavit incorporates by reference the two affidavits of S. Roy Fitzgerald and the single affidavit of Jesse O'Malley filed in criminal proceedings No. 19270, said affidavits were not physically included in the record of civil action No. 6747-Y. To complete the record in this cause, certified photostatic copies of the motion of National City Lines, Inc., to transfer the aforesaid criminal cause to the Northern District of Illinois, the affidavit of E. Roy Fitzgerald in support of said motion, the affidavit of Jesse R. O'Malley in opposition, and the reply affidavit of E. Roy Fitzgerald are filed herewith. Certified copies of the aforesaid motion and affidavits are attached hereto and incorporated herein.

Dated November 4, 1947.

Jesse R. O'Malley,
JESSE R. O'MALLEY,
Special Attorney.

240 In the District Court of the United States for the Southern
District of California, Central Division

Criminal No. 19270

[Title omitted.]

Motion for transfer

(Pursuant to Rule 21 (b))

Defendants National City Lines, Inc., American City Lines, Inc., Pacific City Lines, Inc., E. Roy Fitzgerald, and Foster G. Beamsley (hereinafter referred to as "said defendants") severally

move the Court for an order transferring this proceeding to the District Court of the United States for the Northern District of Illinois, Eastern Division, on the ground that it will be in the interest of justice for this proceeding to be transferred thereto. This motion is made pursuant to Rule 21 (b) of the Federal Rules of Criminal Procedure and is based upon the Indictment, the Bill of Particulars which it is requested by separate motion be furnished, upon affidavits hereafter to be filed in support hereof, and upon the Points and Authorities attached hereto, and such
241 supplemental Points and Authorities as may hereafter be filed. It is requested that the Court defer hearing and determination of this motion until after said Bill of Particulars is furnished. In this regard, reference is made to said Rule 21 (b).

O'MELVENY & MYERS,
LOUIS W. MYERS,
PIERCE WORKS,
JACKSON W. CHANCE,

By PIERCE WORKS,

*Attorneys for defendants National City Lines, Inc.,
American City Lines, Inc., Pacific City Lines, Inc.,
E. Roy Fitzgerald, and Foster G. Beamsley.*

242 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original motion for transfer (Pursuant to Rule 21 (b)) of the defendants National City Lines, Inc., American City Lines, Inc., Pacific City Lines, Inc., E. Roy Fitzgerald and Foster G. Beamsley, filed May 12, 1947, in the United States District Court for the Southern District of California, Central Division, and on August 21, 1947, in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of United States of America vs. National City Lines, Inc., et al., Criminal No. 19270 (United States District Court for the Southern District of California, Central Division) and No. 47 Cr. 524 (United States District Court for the Northern District of Illinois, Eastern Division), now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 28th day of October, A. D. 1947.

ROY H. JOHNSON,
Clerk.

[SEAL]

By S. M. SHEPARD,
Deputy Clerk.

243 In the District Court of the United States for the
Southern District of California, Central Division

Criminal Action No. 19270

UNITED STATES OF AMERICA

v.

NATIONAL CITY LINES, INC., ET AL.

*Affidavit of E. Roy Fitzgerald in support of motion to transfer
proceedings to District Court of the United States for the
Northern District of Illinois, Eastern Division (Chicago)*

STATE OF ILLINOIS,

County of Cook, ss:

E. Roy Fitzgerald, being duly sworn, deposes and says:

1. I am one of the defendants named in the Indictment. I am also a Director and President of National City Lines, Inc. (hereinafter referred to as "National"). I was a director and Chairman of the Board of American City Lines, Inc. (hereinafter referred to as "American") prior to its merger into National in 1946. Pacific City Lines, Inc. (hereinafter referred to as "Pacific"), a subsidiary of National, is also a defendant.

2. I make this affidavit on behalf of myself personally and also on behalf of defendant Foster G. Beamsley (a Vice President and Director of National); defendant National; and defendant Pacific. This affidavit is made in support of a motion of myself and said named defendants for an order pursuant to Rule 21 (b) of the Federal Rules of Criminal Procedure that in the interest of justice this proceeding be transferred to the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

244 3. This affidavit sets forth some of the more material facts respecting the history, business and operations of National, and the manifest hardship to the defendants, and particularly to National, of trying the Indictment in the Southern District of California. The transactions which appear to be the subject of the Indictment took place chiefly in Chicago, Illinois, and none of them took place in this District, (except the one overt act in this District referred to in Paragraph 5 hereof), as appears from the details set forth hereinafter. Any trial of this proceeding in Los Angeles would cause substantial hardship to the defendants, and especially the stockholders of National and of the other corporate defendants. Substantially all evidence, documentary and personal, which the defendants believe can possibly be relevant to the issues of this case, are located far distant from Los Angeles. It would be extremely difficult and expensive, and

impossible in some instances, to obtain the attendance in Los Angeles of the many witnesses whose presence will be essential to a full and fair trial. The necessary presence for several months at a trial in Los Angeles, far removed from the main office of National in Chicago, of the two individual defendants and chief executive officers of National (affiant and defendant Beamsley) and other key employees of National, would prevent their attention to the general business of National and work a great hardship upon it and its stockholders. Most of, if not all, the essential witnesses of all defendants, including National, are engaged in business or reside far distant from Los Angeles. Even to the extent that witnesses and documents are brought before the Court in Los Angeles, great and unnecessary expense will be incurred by the defendants. The Government has an office of the Antitrust Division in Chicago and no substantial hardship will be borne by it if the trial is held there.

4. The following facts charged in the indictment are true with respect to the residences or principal places of business of each defendant:

(i) National has its principal place of business in Chicago, Illinois;

(ii) American, prior to its merger into National in 1946, had its principal place of business in Chicago, Illinois;

245 (iii) Pacific has its principal place of business in Oakland, California;

(iv) Affiant and defendant Beamsley (officers of National) both reside in or about Chicago, Illinois;

(v) Defendant General Motors Corporation (hereinafter referred to as "General Motors") has its principal place of business in Detroit, Michigan;

(vi) Defendant Grossman, an officer of General Motors, resides in or about Detroit, Michigan;

(vii) Defendant Firestone Tire & Rubber Company (hereinafter referred to as "Firestone") has its principal place of business in Akron, Ohio;

(viii) Defendant Jackson, an officer of Firestone, resides in or about Akron, Ohio;

(ix) Defendant Mack Manufacturing Corporation (hereinafter referred to as "Mack") has its principal place of business in New York, New York;

(x) Defendant Phillips Petroleum Company (hereinafter referred to as "Phillips") has its principal place of business in Bartlesville, Oklahoma;

(xi) Defendants Stradley and Hughes, officers of Phillips, reside in or about Bartlesville, Oklahoma;

(xii) Defendant Standard Oil Company of California (hereinafter referred to as "Standard") has its principal place of business in San Francisco, California;

(xiii) Defendant Judd, an officer of Standard, resides in or about San Francisco, California; and

(xiv) Defendant Federal Engineering Corporation (hereinafter referred to as "Federal"), a subsidiary of Standard, has its principal place of business in San Francisco, California.

Thus, not one of the defendants has its principal place of business or resides in the District where the Indictment was returned.

Firestone, General Motors, Mack, Phillips, and Standard are sometimes hereinafter referred to as the "suppliers".

5. The Indictment does not charge that the alleged combination and conspiracy was formed or agreed upon or entered into in the Southern District of California. The only reference to this

district is an allegation that the combination and conspiracy
246 was "carried out in part" in this district by the purchase by American on January 10, 1945, of an interest in Los Angeles Railway Corporation, pursuant to a verbal understanding entered into between it and defendant Federal on December 21, 1944, under which Federal supplied American part of the funds to be used in making such purchase, Federal receiving shares of American in return; the taking of control of the Los Angeles company on January 10, 1945, by the defendant American; and, pursuant to the oral understanding between Federal and American, the later granting of a contract by the Los Angeles company to Standard for petroleum products (par. 25 of Indictment).

The indictment does not charge that the alleged agreement, between Federal and American for the furnishing of capital to American and the acquisition of a stock interest by Federal in American for the acquisition of control of the Los Angeles company, was made in the Southern District of California. Moreover, while the alleged combination and conspiracy is charged to have commenced in 1937, the overt acts alleged to have been performed in this district deal with only one of the more than forty transit systems in which National had become interested, and this one transaction is alleged to have occurred in 1945, more than eight years after the alleged commencement of the concert of action.

6. Business of National and its relation to the suppliers.—National is, by the Indictment, alleged to be the central defendant and its relationships with the other defendants is attacked by the Indictment. It was with National that all of the suppliers are alleged to have made the agreements which are complained of, and National is alleged to have purchased interests in operating companies which carried out the alleged concert of action. Na-

tional is charged with having participated in each of the acts which are alleged to form the concert of action which is complained of.

National is a Delaware corporation. It was formed in 1936 at the instance of my four brothers and myself who then turned over to it a few bus properties in the middle west, which we had owned or controlled. We became, and always have been, directly or indirectly, the owners of the largest block of its common stock and its principal executive officers. I have been its President since its formation.

247 National was founded and has been developed on the policy of buying interests in transit systems, which were totally or partially obsolete, and then converting these systems into modern bus transportation units.

National has always been and now is managed and operated from Chicago. Its principal place of business has always been and now is Chicago.

Investigations respecting transit operating companies throughout the United States were directed from Chicago by National and American. All important policies and decisions in connection with the purchase of interests in operating companies were made by National or American in Chicago.

In practically every instance all of National's one hundred per cent subsidiaries, with the exception of the subsidiaries of Pacific, are now, and over the whole life of National have been, closely supervised from Chicago. Their books of account have been kept in Chicago, their purchases of supplies have been arranged in Chicago, and all other operations have been supervised in Chicago. The relation of National with the suppliers, in respect to the operating companies in which National owned less than a 100% interest, has always been carried on in Chicago.

7. So far as defendants are presently advised the indictment appears to be based essentially upon (1) separate or individual contracts under which the supplier defendants severally invested in the securities of National or American, and (2) contracts under which operating companies (in which National, American and Pacific were or are interested), purchased certain of their requirements of motor buses, tires and tubes, and petroleum products from the supplier defendants.

(a) All such contracts with National or American (for investment and for requirements) were separately and individually negotiated and agreed upon principally in Chicago and in part at the main offices of the respective supplier defendants.

After such contracts were approved and executed on behalf of National or American in Chicago, they were severally executed by the supplier defendants, respectively, at their offices in Akron,

Ohio (Firestone), Pontiac, Michigan (General Motors), New York, N. Y. (Mack, Bartlesville, Oklahoma (Phillips), and San Francisco, California (Standard).

248 (b) All transactions for the purchase of preferred or common stocks of National or American were negotiated and agreed upon in Chicago. The stocks so purchased were issued from, delivered to and paid for by the supplier defendants, respectively, in Chicago. Likewise, the retirement of the preferred stock in National owned by the supplier defendants, and the exchange of their stock in American for National's stock in connection with the merger of American into National, were carried out in Chicago.

8. Pacific City Lines.—The operations of Pacific are and were relatively unimportant as compared with the aggregate of the transactions upon which the Indictment appears to be based. Pacific was organized in May 1938, at the instance of National, City Coach Lines, Inc. (a corporation whose stockholders were located in or about Chicago and whose business was conducted from Chicago), Standard, and General Motors. The corporation was organized as a Delaware corporation and on April 1940 its main office was in Chicago from which place its affairs were conducted. In April 1940 the main office was changed to Oakland, California, and in December 1940 National sold its entire stock interest in Pacific and withdrew from any participation in its affairs. From December 1940 until July 1946, most of the stock of Pacific was owned by certain of the supplier defendants. In July 1946, pursuant to an agreement made on March 26, 1946, stock of National was issued in exchange for all of the outstanding stock of Pacific, and National then again became interested in and directed the operations of Pacific.

From its formation until April 1940 Pacific was managed and operated from Chicago by National in much the same manner as National managed and supervised its other subsidiary companies. Its stock issued prior to April 1940, including the shares originally subscribed for by certain of the suppliers, was issued from and paid for in Chicago, and up to April 1940 all its directors' meetings were held in Chicago, including meetings at which the original subscription agreements of the suppliers were approved. After April 1940 Pacific was managed and operated from Oakland and all meetings of directors were held in that city with the exception of five or six held in San Francisco and one in Pontiac, Michigan. The supply contracts between Pacific and certain of the suppliers were prepared and executed by the suppliers 249 at their main offices (Akron, Detroit or Pontiac, and San Francisco) and were executed by Pacific in Oakland.

At the present time, the general policies of Pacific are directed from Chicago. The dealings and negotiations between Pacific and the suppliers are carried on principally in Chicago, or at the home offices of the particular suppliers.

9. Proof to be offered at trial.—I am advised by counsel that the trial will involve an extensive inquiry into the history, business, and operations of National from its organization in 1936 up to the present time and, in addition, the complete relationship between National and the five suppliers during this period, and possibly the relationship between National and other supplier companies who operate outside the Southern District of California. Some of the matters which will be the subject of inquiry and testimony will be the organization of National in Chicago in 1936; the growth and operation of National in Chicago over the next ten years; its relationship and contracts with the supplier defendants and other supply companies, all of which took place in Chicago or stemmed from Chicago; its financing in and from Chicago; and the purchase of and its direction and supervision of operating companies, all of which took place in and from Chicago. This proof will require the production of a mass of contracts, correspondence, and other data. It will require testimony concerning the meetings of the Boards of Directors of National and American, all of which meetings, with the exception of a few, were held in Chicago; testimony respecting investigations made by National of many operating companies throughout the United States and its acquisition of interests in certain of them, all of which investigations were directed from Chicago, and records of which are located in Chicago; and testimony respecting the purposes and intentions of National in making arrangements with the suppliers and the effect of such arrangements upon the business of National and upon the transportation industry generally, all of which must be proved principally from records located in Chicago or from testimony of persons residing in or near Chicago. These are but a few of the many matters to be developed at the trial, and they suggest a great many others which will necessarily be gone into.

250 10. Documents to be used at trial.—The documents which were subpoenaed by the Government from National in the investigation which preceded the Indictment clearly reflect that the proof at the trial will be based primarily on papers and documents located in Chicago and the testimony of persons residing in or near Chicago.

Commencing in September 1946, Grand Jury subpoenas were served on National and others which called for hundreds of papers, records, documents, analyses, and compilations. National,

for itself and its thirty-four Chicago operated subsidiaries, furnished the Government with a mass of papers and documents taken from files in Chicago.

The documents and papers furnished by National consist, among others, of the contracts between National or American and their Chicago subsidiaries, and the suppliers; inter-office memoranda relating to such contracts which were written chiefly in Chicago; correspondence respecting the contracts written to or from Chicago; contracts, assignments, bills of sale, petitions to and decisions of state regulatory bodies relating to the acquisition of interests in operating companies; and various detailed statistical compilations, schedules, and tabulations. These compilations and schedules were prepared from numerous books of account and other corporate records of National in Chicago. The preparation of such compilations and schedules took several weeks and the work of many accountants, bookkeepers, clerks and other employees of National employed in Chicago. All of the persons engaged in the preparation of such compilations and schedules live in or about Chicago.

St. Louis Public Service Company, which operates in St. Louis, Missouri; Baltimore Transit Company, which operates in Baltimore, Maryland; Los Angeles Transit Lines, which operates in Los Angeles, California; and Pacific, also furnished the Government many documents and papers. Of such documents only a small number were furnished by Los Angeles Transit Lines, of which only a few concerned the relationship between the Los Angeles company and its suppliers.

251 11. Trial in the Southern District of California will work a great hardship upon the defendants, and particularly on National.—I have been advised by counsel, and it is my belief, that (i) the trial of this action will probably take several months; (ii) in view of the charges which cover a period of over ten years since 1937 it will be necessary in the interest of justice that there be made available to the Court full and complete testimony as to the many matters which will be relevant in determining the charges; (iii) the trial of this proceeding will necessarily require a mass of documentary evidence, consisting of agreements, memoranda, letters, statistical compilations, and other records, from the files of National, the five suppliers, and other companies; (iv) the documentary evidence, which will be offered by the Government as well as the various defendants, will itself necessarily require the supporting and clarifying testimony of many witnesses; (v) in addition to such documents and the witnesses in connection therewith, there will be the extended verbal testimony of a great many other witnesses; (vi) while it is impossible now to forecast how many witnesses will be called to testify, it

is likely that the number will be at least one hundred; and (vii) many essential witnesses will come from various parts of the country, but largely from the Chicago area, and only a small number, if any, from Los Angeles.

12. Since all important meetings and decisions affecting National, American and their subsidiary companies have been held or made in Chicago, this will require the presence in Los Angeles of a large part of their operating force. Both Mr. Beamsley and I must necessarily attend throughout the trial. Among others who will have to attend are Ed Fitzgerald, Vice President and Treasurer; E. V. Anderson, Vice President and Controller; J. M. Schramm, Secretary and Assistant Treasurer; and G. L. Walker, Assistant Secretary, all officers of National, who have their offices and who reside in or about Chicago. A number of key employees on the accounting staff of National who are familiar with the financial and accounting matters will undoubtedly be forced to come to and stay in Los Angeles throughout the trial.

252 The remoteness of Los Angeles for the many individuals who are familiar with the subject matters of this proceeding will greatly handicap National, and presumably the other defendants, in preparing for trial and obtaining the testimony of witnesses whom it regards as essential in fully developing all pertinent facts.

The trial of the proceeding in Los Angeles will involve a great financial expense to National. In addition to all of the executive staff and employees who must necessarily come to Los Angeles and stay throughout the trial, there will be the expense of preparation in Los Angeles. This preparation will necessitate the constant attention of Los Angeles counsel in addition to the general counsel for National, and in the course of preparation many of the executives and officers and employees of National will necessarily have to come to Los Angeles and spend considerable periods of time. The expense of travel to and from Los Angeles alone will be substantial.

Thus a trial in Los Angeles will cause substantial injury to the operations of National and the transit companies whose operations it supervises and will put upon National a very large financial burden. All this could be eliminated by a trial in Chicago.

13. If any offenses were committed at all, they were committed principally in Chicago and partly at the places where the various suppliers have their main offices. The alleged offenses were not committed in Los Angeles or in the Southern District of California, even though one overt act assertedly performed in fur-

therance of such offenses is alleged to have been performed there. This proceeding should not be tried in Los Angeles, which has no significant relationship to the matters involved, but should in the interest of justice be tried in the United States District Court in Chicago, where the offenses charged were for the most part committed, if committed at all. Chicago, and least of all Los Angeles, is the place where there is the greatest access to all the sources of proof, documentary, verbal or otherwise. Chicago, and least of all Los Angeles, is the place where it will be possible to obtain the attendance of willing witnesses at the least expense to the defendants and the Government. Los Angeles
 253 is the place where the trial would result in the greatest hardship to the many defendants and their stockholders, without any corresponding benefit to the Government.

14. For the many reasons above set forth, I respectfully pray this Court in the sound exercise of its discretion to transfer this case for trial to the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

E. ROY FITZGERALD.

Sworn to before me this 29th day of May 1947.

[SEAL]

MARY E. JOYCE, *Notary Public.*

254 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original affidavit of E. Roy Fitzgerald, in support of motion to transfer proceedings to District Court of the United States for the Northern District of Illinois, Eastern Division, filed June 2, 1947, in the United States District Court for the Southern District of California, Central Division, and on August 21, 1947, in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of United States of America vs. National City Lines, Inc., et al., Criminal No. 19270 (United States District Court for the Southern District of California, Central Division) and No. 47 Cr. 524 (United States District Court for the Northern District of Illinois, Eastern Division), now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 28th day of October, A. D. 1947.

ROY H. JOHNSON,
Clerk.

[SEAL]

By S. M. SHEPARD,
Deputy Clerk.

255 In the District Court of the United States for the Southern
District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Affidavit of Jesse R. O'Malley in opposition to the motion to transfer this case to the District Court of the United States for the Northern District of Illinois, Eastern Division

Filed July 18, 1947

COUNTY OF LOS ANGELES,

State of California, ss:

Jesse R. O'Malley, being duly sworn, deposes and says:

That he is one of the counsel for the Government in the case of United States v. National City Lines, Inc., et al., Criminal No. 19270, in the Southern District of California, Central Division, and that he was connected with and participated in the investigation and presentation of the facts and evidence resulting
256 therefrom before the Grand Jury which returned the Indictment in said case and is actively engaged in the preparation of said case for trial and is personally familiar with the facts contained in the averments and allegations herein made.

Affiant avers that a substantial number of the agreements which the Government contemplates using in the trial of said case were negotiated in the State of California; that the evidence which the Government contemplates and expects to introduce to provide the allegations of the Indictment covers and relates to the activities of the defendants Standard Oil Company of California, Federal Engineering Corporation, General Motors Corporation, Firestone Tire and Rubber Company, and Pacific City Lines, Inc., in the West Coast area including the State of California in particular; that this evidence will cover a period of approximately nine years and that such evidence will also cover the activities of the defendant National City Lines, Inc., within the West Coast area including, among other activities, its actions within the past three years relating to the manner and method whereby it secured control of defendant Pacific City Lines, Inc., the Los Angeles Transit Lines, the Long Beach City Lines, and the Key System which operates in Oakland and the San Francisco Bay area in the State of California, as well as the relations between such companies and the supplier defendants named in the Indictment, exclusive of the defendant Phillips Petroleum Company.

Affiant further avers that the Government contemplates calling a substantial number of witnesses from the Pacific Coast and states adjacent thereto whose testimony will be introduced by the

Government to prove the existence and the effects of the conspiracy charged in the Indictment as well as the connection of the various defendants therewith. Affiant further avers that in presenting this matter to the Grand Jury, which returned the Indictment, a majority of the witnesses who testified resided in or were from the Pacific Coast area.

257 Affiant further avers that a large amount of documentary evidence will be subpoenaed by the Government from companies doing business in the Pacific Coast area which evidence will form a substantial part of the proof which the Government expects to offer in support of the allegations in the Indictment on the trial of the within case. Affiant further avers that more than 300 documents were subpoenaed and returned to the Grand Jury by the defendant Pacific City Lines, Inc., during the course of the Grand Jury investigation of this case and that said defendant also produced extensive tabulations and other compilations which were prepared from the books and records of said defendant Pacific City Lines, Inc., whose principal place of business is in Oakland, California.

Affiant further avers that the Government expects to subpoena numerous documents, books, and records on the trial of this case from the defendant Standard Oil Company of California and Federal Engineering Corporation which defendants have their principal office within the State of California and carry on extensive business operations which relate to the restraints charged in the Indictment within the jurisdiction of this Court.

Affiant further avers that all the supplier defendants except Mack Manufacturing Corporation and Phillips Petroleum Company are found and transact business on a large scale in the Southern District of California; that affiant has reason to believe and therefore avers that defendant Mack Manufacturing Corporation is a wholly owned subsidiary of Mack Trucks, Inc., and that said Mack Trucks, Inc., does business in the Southern District of California through Mack International Motor Truck Corporation, its wholly owned subsidiary; that W. Ralph Fitzgerald, Vice President and Operating Manager of National City Lines, Inc., who appeared as a witness before the Grand Jury, which returned the Indictment, lives in the City of Los Angeles and has offices here from which he supervises the operations of defendant National City Lines, Inc., on the Pacific Coast; that
258 said W. Ralph Fitzgerald is one of the two officers of defendant National City Lines, Inc., in charge of the purchases of busses, tires, tubes, and petroleum products for the operating subsidiaries of defendant National City Lines, Inc., the purchase of which products is the subject of the restraints

alleged in the Indictment; that defendant E. Roy Fitzgerald is Chairman of the Board of Directors of Los Angeles Transit Lines; that defendant Foster G. Beamsley is also a director of the Los Angeles Transit Lines; that the Government contemplates introducing important and substantial evidence on the trial of the within case in support of the principal allegations and charges made against the defendants in the Indictment, which evidence will relate to both the manner and method whereby control was acquired of Los Angeles Transit Lines by defendant American City Lines, Inc., and the manner and the method whereby the trade restraints described in the Indictment were thereafter imposed on said Los Angeles Transit Lines by the defendants; that defendant Pacific City Lines, Inc., is a wholly owned subsidiary of defendant National City Lines, Inc., and also carries on extensive business operations in the Southern District of California, which business operations are the subject of the restraints described in the Indictment; that said defendants Standard Oil Company of California, General Motors Corporation, and the Firestone Tire and Rubber Company all have large plants and business offices in the Southern District of California; that the only corporate defendant doing no business whatever in any manner in the Southern District of California is the Phillips Petroleum Company whose headquarters are in Bartlesville, Oklahoma.

Affiant further avers that the Government contemplates subpoenaing documentary evidence from the defendant National City Lines, Inc., on the trial of this case but that affiant is informed and therefore avers that the filing system of said defendant National City Lines, Inc., is decentralized and that much of the documentary evidence to be produced by such defendant on the

250 trial of such case, pursuant to subpoena, will be found and obtained from files of some of the subsidiaries of defendant National City Lines, Inc., many of which are doing business within the jurisdiction of this Court as before averred; that C. Frank Reavis of New York City, Counsel and Director of National City Lines, Inc., is reported to have made the following statement under oath before the Public Service Commission of Maryland on September 14, 1944, with reference to the twenty-eight operating companies which were then under the control of National City Lines, Inc., in which he indicated that many subsidiaries of National City Lines, Inc., were locally operated: "I do not mean to say National City operates them. Each subsidiary in its own city is responsible for its own operations."

Affiant further avers that information submitted to the Grand Jury, pursuant to subpoena, by defendant National City Lines, Inc., disclosed that two groups of subsidiary corporations are con-

trolled by said defendant, i. e., those primarily directed from Chicago and those directed primarily by local management. Said information submitted by said defendant referred to the consolidated total assets of "Chicago operated companies" as totalling \$29,499,201.45. Affiant has reason to believe and therefore avers that the assets of the Key System operated by the defendant National City Lines, Inc., in the City of Oakland and the San Francisco Bay area as of September 30, 1946, totalled \$19,288,616.54; that the price paid for the securities of the Los Angeles Transit Lines by defendant National City Lines, Inc., or its controlled subsidiary American City Lines, Inc., was \$12,880,000; and that the total assets of the Key System and the Los Angeles Transit Lines, which operate in the Pacific Coast area and whose motor bus, tires, tubes, and petroleum products business is subject to the restraints charged in the Indictment, is in excess of the total assets of all of the so-called "Chicago operated companies."

Affiant further avers that the sale of busses, tires, tubes, and petroleum products, which is the subject of the trade restraints charged in the Indictment and concerning which the Government expects to introduce evidence on the trial of the within case, is far greater on the Pacific Coast than in any other area of the country in which the defendants conduct their operations. Affiant further avers that pursuant to subpoena defendant National City Lines, Inc., produced figures before the Grand Jury which indicated that during the first eight months of 1946 motorbusses purchased by the so-called "Chicago operated companies" totalled only \$760,681, where as during the same eight months' period the Los Angeles Transit Lines produced figures before the Grand Jury which indicated that during the same period its purchases of motor busses totalled \$2,232,975.58, all of which evidence the Government expects to produce, together with other evidence, on the trial of the within case in support of the allegations and charges made against all defendants named in the Indictment.

Dated July 18, 1947.

Jesse R. O'Malley

JESSE R. O'MALLEY,

Special Attorney,

United States Department of Justice.

Subscribed and sworn to before me this 18th day of July 1947.

[SEAL]

MARY M. DONITTE,

Notary Public.

My Commission Expires Feb. 27, 1951.

261 In the District Court of the United States in and for the
Southern District of California, Central Division

No. Cr. 19270

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANT

AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES OF AMERICA,
Southern District of California, ss:

Helen Sheridan, being first duly sworn, deposes and says:

That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (her) business address is 1602 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on July 18, 1947 (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Affidavit of Jesse R. O'Malley in Opposition to the Motion to Transfer, etc.; Jackson W. Chance, O'Melveny & Myers; Oscar Trippet, Haight, Trippett & Syvertson; T. B. Cosgrove, Cosgrove, Clayton, Cramer & Diether; Herbert T. Morrow, Bennett, Finlayson & Morrow; Charles E. Millikan, Wright & Millikin; John M. Hall; Lawler, Felix & Hall, at their last known address, at which place there is a delivery service by United States Mails from said post office.

HELEN SHERIDAN.

Subscribed and sworn to before me, this 18th day of July, 1947.

Clerk, U. S. District Court,
Southern District of California.
By WM. A. WHITE,

Deputy.

262 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original affidavit of Jesse R. O'Malley in opposition to the motion to transfer this case to the District Court of the United States

for the Northern District of Illinois, Eastern Division, filed July 18, 1947, in the United States District Court for the Southern District of California, Central Division, and filed August 21, 1947, in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of United States of America vs. National City Lines, Inc., et al., Criminal No. 19270 (United States District Court for the Southern District of California, Central Division) and No. 47 Cr. 524 (United States District Court for the Northern District of Illinois, Eastern Division), now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 28th day of October A. D. 1947.

ROY H. JOHNSON,
Clerk.

[SEAL]

By S. M. SHEPARD,
Deputy Clerk.

263 In the District Court of the United States for the Southern District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Reply affidavit of E. Roy Fitzgerald in support of motion to transfer proceeding to District Court of the United States for the Northern District of Illinois, Eastern Division

Filed Aug. 11, 1947

STATE OF ILLINOIS,

County of Cook:

E. Roy Fitzgerald, being duly sworn, deposes and says:

1. I am one of the defendants named in the indictment. I am a Director and President of National City Lines, Inc., a defendant (hereinafter called National). This affidavit is in reply to the affidavit of Jesse R. O'Malley, one of the counsel for the Government. In opposition to the motion by all the defendants for an order, pursuant to Rule 21 (b) of the Federal Rules of Criminal Procedure, that in the interest of justice this proceeding be transferred from this district (where no one of the defendants

264 has his or its principal place of business or resides) to the District Court of the United States for the Northern District of Illinois, Eastern Division (Chicago).

2. I respectfully represent that the opposing affidavit deals with matters concerning certain local operating companies which are irrelevant or inconsequential with respect to the ultimate

grounds of the motion—the hardship to the defendants, especially National, of a trial in this district and the importance, if there is to be a full and fair inquiry, of a trial in Chicago.

3. In order to appraise the significance of the matters raised in the opposing affidavit it is necessary again to consider the nature of the restraints charged. The indictment alleges a concert of action extending over ten years commencing 1937 to acquire a substantial financial interest in companies which provide local transportation service and to eliminate and exclude all competition in the sale of motor buses, petroleum products, tires and tubes to such companies (Indictment par. 21). National is the central defendant and the indictment concerns and attack its relationship with the supplier defendants. The transportation system in Los Angeles is only one of the more than forty operations in which National is interested and this interest was acquired only in 1945, more than eight years after the alleged commencement of the concert of action in 1937. The basic transactions and relationships upon which the proceeding seems to be based are:

265 (a) National in 1939 and American City Lines, Inc. (organized in 1943) in 1943 and 1944 made certain agreements with the suppliers under which they provided money to National or American against their securities (Indictment pars. 22 and 23). Such agreements were negotiated by the chief executive officers of the various corporations and were principally agreed upon in Chicago. These agreements were executed in Chicago by National or American and were severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard). The stock of National or American so purchased was paid for and delivered in Chicago. When American was merged into National in 1946, a merger whose terms were negotiated in Chicago, the stock of American previously purchased by certain of the suppliers was exchanged for stock of National.

(b) National in 1939 and American in 1943 and 1944 made certain agreements with the suppliers to purchase certain supplies (Indictment pars. 22 and 23). Such agreements were executed by the chief executive officers of the various companies in Chicago and were principally agreed upon in Chicago. After each contract was approved it was executed by National or American in Chicago and then severally executed by the suppliers at their offices in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartlesville, Oklahoma (Phillips), and San Francisco (Standard).

(c) National has always been managed from Chicago.
 266 All investigations respecting transit properties in the United States and the purchase of interests in transit properties were directed from Chicago by National and American. All important policies and decisions in connection with the purchase of interests in operating companies were made by National or American in Chicago.

4. Thus, it is the contracts and relationships between National and the suppliers that are challenged. It is a broad and national concert of action that is charged. It is at once apparent that the vital matters at any inquiry will not concern the local matters affecting the individual operating companies, but will concern the basic and "over-all" management and financial policies of National and National's relationship with its suppliers. The essential matters will be the organization of National in Chicago in 1936; its growth and operation; its relationships and contracts with the supplier defendants and other suppliers, all of which took place in or stemmed from Chicago; the financing of National in and from Chicago; and the purchase of and directions and supervision of operating companies, all of which took place in and from Chicago. All of these matters involve decisions and determinations made, on the highest management level, by executive officers of National and the supplier defendants in and about Chicago and the home offices of the suppliers. The essential testimony as to all these fundamental policies, decisions, and transactions must come from the executive officers of National and the supplier defendants, all of whom reside and have their place of business far from this district. The relevant documentary
 267 proof must come from the records maintained at the home offices of all these companies, all of which are far removed from this district. The opposing affidavit does not and cannot question this.

5. The opposing affidavit deals with "local" or inconsequential matters which will not be a vital part of this inquiry. It does not even attempt to confine such "local matters" to this district, but speaks generally of the "Pacific coast area"—a wide area of which this district is only a part. While no purpose would be served by commenting in detail on all such "local matters," it may be appropriate to refer to some of the matters set forth in the opposing affidavit.

(a) The opposing affidavit attempts to outline the testimony which will be offered respecting National (p. 2). Reference is there made to the alleged activities in the "West Coast area" of a number of companies and it states that the evidence will cover the activities of National "within the past three years relating to the manner and method whereby it secured control of Pacific

City Lines, Inc., the Los Angeles Transit Lines, the Long Beach City Lines and the Key System which operates in Oakland and the San Francisco Bay area in the State of California, as well as the relations between such companies and the supplier defendants * * *." The above allegations are substantially the only ones in the opposing affidavit regarding the activities of National upon which it is sought to justify a trial in the Southern District of California. Stripped of its general language this merely means that National acquired control of these companies. This

268 was done by purchase, except in the case of Pacific City Lines, Inc., in which there was an exchange of stock, arranged and carried out in Chicago. The gist of the Indictment is not the making of such purchases—but the alleged broad concert of action between National and the suppliers. Purchases of interests in transportation properties were made by National in over forty communities and it certainly could not be argued that this case could fairly be tried in any one of them.

(b) The opposing affidavit (pp. 2, 3) contains general averments that a large amount of documentary evidence will be subpoenaed by the Government from companies doing business in the "Pacific Coast area" and that more than three hundred documents were subpoenaed from Pacific City Lines, Inc. during the Grand Jury investigation. Again—the Government could subpoena every book and record of any Company, including Pacific City Lines, Inc., without affecting the ultimate fact that the alleged offense lies elsewhere and the substantial proof lies elsewhere—in Chicago. It is understandable that the Government obtained much material regarding local matters from many documents, extending from the East to the West coast.

(c) The opposing affidavit states (p. 3) that all the supplier defendants, except Phillips, do business in this district. However, the question is not one of venue and there is no significance in the fact that the supplier defendants may be here engaged in local sales activities.

(d) The opposing affidavit refers (p. 4) to the fact that defendant Beamsley and I are directors of Los Angeles Transit Lines. It has been only natural for officers of National
269 to serve as directors of companies in which National is interested. Thus, defendant Beamsley and I are members of the Board of Directors of St. Louis Public Service Company and I am a member of the Board of Baltimore Transit Lines. The opposing affidavit again refers (p. 4) to the "manner and method" of the acquisition of control of the Los Angeles Transit Company. But, again, this is not relevant to the main issue in the case.

(e) The opposing affidavit alleges (pp. 4, 5) that since National is a decentralized company "evidence to be produced by such defendant on trial" will be obtained from the files of its subsidiaries. This is in error. National is, of course, decentralized in that local operations of its wholly owned subsidiaries are carried on locally, and the operations of the companies in which it has investments are all carried on locally. These operations, however, have nothing to do with the alleged concert of action between National and the suppliers. All files (as to National) with respect to the broad concert of action alleged are located in the main office of National in Chicago and (as to the suppliers) are, to my information and belief, located at the main offices of the respective suppliers.

The opposing affidavit quotes a statement by C. Frank Reavis, counsel and a director of National, in a hearing before the Public Service Commission of Maryland, that "each subsidiary in its own City is responsible for its own operations." This statement was made in 1944 with respect to the operating companies, mostly in the Midwest, which were 100% owned by National, and referred to the local affairs of these companies, such as labor relations, maintenance of 100% equipment, and other like matters of
270 daily operation. As stated in my main affidavit with respect to such subsidiaries (p. 5), the books of account have been kept in Chicago, their purchases of supplies have been arranged in Chicago, and their operations supervised in Chicago. However, it is not such operation by the local units that is attacked in this proceeding, but the basic policies and decisions of National involved in its relationships with the suppliers, all of which have necessarily been made from or in Chicago. The relationship of National with the suppliers with respect to all companies in which National has been interested has always been carried on in Chicago.

(f) The opposing affidavit refers (p. 5) to the total assets of the Key System and the price paid for the securities of Los Angeles Transit Lines. This is irrelevant, as it would be irrelevant to mention that the total assets of the Baltimore Transit Company and St. Louis Public Service Company, in which National has investments, were, as of December 31, 1946, \$56,731,650.48 and \$44,721,927 which is substantially in excess of the total assets appearing on the balance sheet of either the Los Angeles Transit Lines or the Key System. While reference is made to the total dollar amount of supplies sold to the operating companies in the Pacific Coast area—not this district (p. 5), this fiscal information has no significance since the essential matters are the dealings and purchase policies between National and the suppliers, policies

negotiated and determined in places far distant from this district.

(g) Reference is made to Pacific City Lines, Inc. (all of whose operations are outside of this district). As set forth in my main affidavit (p. 6), the supply contracts between Pacific and certain of the suppliers were prepared and executed by the suppliers at their main offices, Akron, Detroit, Pontiac, and San Francisco, and were executed by Pacific in Oakland, California. The general policies of Pacific are directed in Chicago and dealings and negotiations between Pacific and the suppliers are carried on principally in Chicago or at the main offices of the particular suppliers.

(h) The mere circumstance that there might be some witnesses or some documents in this district cannot defeat the overwhelming justice in the application of defendants for a removal of this proceeding.

6. A transfer of the proceeding to Chicago is more than a matter of "convenience" to the defendants but is essential to avoid unnecessary hardship and to insure, by the availability of all important proof, a full and fair trial and is in the interest of justice. No facts are set forth in the opposing affidavit to weaken or question the factual showing of such hardship in the moving affidavits. Again to summarize briefly the compelline grounds for such transfer.

(a) Most of the many witnesses, including executive officers and key employees, who will be required to testify, reside in or about Chicago, or in Akron, Ohio, or in Detroit, Michigan, or in Bartlesville, Oklahoma, or in New York City, for all of whom Los Angeles would be remote and Chicago a vastly more centrally located place.

(b) All of the executive officers and key employees of National, substantially all of whom reside in or about Chicago, will be required to attend the trial and their absence from Chicago would seriously interfere with the proper management of National and the many companies in which it is interested and will impose a great hardship upon National and its stockholders. As for National, this will include affiant and Mr. Beamsley, both of whom must necessarily attend through the trial; Ed Fitzgerald, Vice-President and Treasurer, E. V. Anderson, Vice-President and Comptroller, J. M. Schramm, Secretary and Assistant Treasurer, and G. L. Walker, Assistant Secretary, all of which officers of National have their offices and reside in or about Chicago.

(c) The main body of the large volume of documentary evidence is located in Chicago or in the home offices of the defendant suppliers, all of which are far distant from Los Angeles.

(d) A great burden of expenses will be imposed upon the defendants, especially National, if the trial is held in Los Angeles, rather than Chicago.

7. I respectfully urge that it would be difficult to find a more appropriate case for the application of Rule 21(b) bearing in mind the essential purpose of the Rule, as it appears from the language of the Rule and the many advisory notes and comments of its draftsmen. I pray the Court for an order transferring the proceeding to the District Court in Chicago.

E. ROY FITZGERALD,

Sworn to before me this 6th day of August 1947.

[NOTARIAL SEAL]

MARY E. JOYCE.

*Notary Public in and for the
County and State aforesaid.*

273 UNITED STATES OF AMERICA,

Northern District of Illinois, ss:

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original reply affidavit of E. Roy Fitzgerald in support of motion to transfer proceeding to District Court of the United States for the Northern District of Illinois, Eastern Division, filed August 11, 1947, in the United States District Court for the Southern District of California, Central Division, and filed August 21, 1947, in the United States District Court for the Northern District of Illinois, Eastern Division, in the case of United States of America vs. National City Lines, Inc., et al., Criminal No. 19270 (United States District Court for the Southern District of California, Central Division) and No. 47 Cr. 524 (United States District Court for the Northern District of Illinois, Eastern Division), now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 28th day of October A. D. 1947.

ROY H. JOHNSON,

Clerk.

[SEAL]

By S. M. SUEPARD,

Deputy Clerk.

274 In the District Court of the United States in and
for the Southern District of California, —
Division

No. —

UNITED STATES OF AMERICA, PLAINTIFF

vs.

NATIONAL CITY LINES, INC., ET AL., DEFENDANTS

AFFIDAVIT OF SERVICE BY MAIL

UNITED STATES OF AMERICA,

Southern District of California, ss:

Emma Jean Eason, being first duly sworn, deposes and says:
That (s)he is a citizen of the United States and a resident of
Los Angeles County, California; that (her) business address is
1602 Post Office and Court House, Los Angeles, California; that
(s)he is over the age of eighteen years, and is not a party to the
above-entitled action;

That on November 4, 1947 (s)he deposited in the United States
Mails in the Post Office at 312 No. Spring Street, Los Angeles,
California, in the above-entitled action, in an envelope bearing the
requisite postage; a copy of Completion of Record, addressed to
Jackson W. Chance, O'Melveny & Myers; Oscar Trippet, Haight,
Trippet & Syvertson; T. B. Cosgrove, Cosgrove, Clayton, Cramer
& Diether; Hubert T. Morrow, Bennett, Finlayson & Morrow;
Charles E. Millikan, Wright & Millikan; John M. Hall, Lawler,
Felix & Hall, at their last known address, at which place there is
a delivery service by United States Mails from said post office.

EMMA JEAN EASON.

Subscribed and sworn to before me, this 4th day of November

*Clerk, U. S. District Court,
Southern District of California,
By CHARLES A. SEITZ,
Deputy.*

275 In the District Court of the United States for the Southern
District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Petition for appeal

Filed Dec. 3, 1947

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final decree of this Court entered on the fifteenth day of October 1947, does hereby pray an appeal from said final decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

The plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the records, proceedings, and documents upon which said final decree was based, duly authenticated, be sent to the Supreme
276 Court of the United States under the rules of said Court in such cases made and provided.

John F. Sonnett,

JOHN F. SONNETT,
Assistant Attorney General.

William C. Dixon,

WILLIAM C. DIXON,
Special Assistant to the Attorney General.

Jesse R. O'Malley,

JESSE R. O'MALLEY,
Special Attorney.

Dated this 3d day of December, 1947.

277 In the District Court of the United States for the Southern
District of California, Central Division:

[File endorsement omitted.]

[Title omitted.]

Assignment of errors and prayer for reversal

Filed Dec. 3, 1947

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final decree of the district court on October 15, 1947, in the above-entitled cause, and says that in the entry of the final decree the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in holding that it has discretion to entertain a motion based upon forum non conveniens to dismiss an equity suit brought by the United States under Sections 1 and 2 of the Sherman Act.

2. The court erred in holding that the Southern District of California in an inappropriate forum in which to maintain the present suit.

278 3. The court erred in holding that the interests of justice require that this suit be dismissed, without prejudice to the plaintiff commencing a similar suit against these defendants in another forum.

4. The court erred in dismissing the plaintiff's complaint.

Wherefore, plaintiff prays that the final decree of the district court may be reversed to the extent that it is inconsistent with the errors herein assigned by the plaintiff, and for such other and fit relief as to the court may seem just and proper.

John F. Sonnett,

JOHN F. SONNETT,

Assistant Attorney General.

William C. Dixon,

WILLIAM C. DIXON,

Special Assistant to the Attorney General.

Jesse R. O'Malley,

JESSE R. O'MALLEY,

Special Attorney.

Dated this 3d day of December 1947.

300 In the District Court of the United States for the Southern
District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Order allowing appeal

Filed Dec. 3, 1947

In the above-entitled cause, the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered on the fifteenth day of October 1947, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided:

It is therefore ordered and adjudged

That the appeal be and the same is hereby allowed as prayed for.

LEON R. YANKWICH,
United States District Judge

Dated this 3d day of December 1947.

303 In the District Court of the United States for the Southern
District of California, Central Division

[File endorsement omitted.]

[Title omitted.]

Praecipe

Filed Dec. 8, 1947

*To The Clerk, United States District Court, Southern District
of California, Central Division:*

The appellant hereby directs that, that in preparing the record in the above-entitled cause for its appeal to the Supreme Court of the United States, you include the following:

1. Complaint filed April 10, 1947.
2. Order of Judge Yankwich filed July 16, 1947, extending time in which to move or plead.
3. Motion of defendant Mack Manufacturing Corporation filed August 7, 1947.
4. Joinder of defendant Standard Oil Company in motion of defendant National City Lines, Inc., filed August 11, 1947.
5. Affidavit of E. Roy Fitzgerald, filed August 11, 1947.

6. Affidavit of C. Frank Reavis, filed August 11, 1947.
7. Motion to dismiss filed by defendant National City Lines, Inc., August 11, 1947.
- 304 8. Motion to dismiss filed by defendant The Firestone Tire and Rubber Company, August 11, 1947.
9. Joinder of defendant General Motors Corporation in motion to dismiss, filed August 11, 1947.
10. Motion of defendant Phillips Petroleum Company, filed August 11, 1947.
11. Amended motion to dismiss filed by defendant National City Lines, Inc., August 28, 1947.
12. Affidavit of Jackson Chance, filed August 28, 1947.
13. Amended motion to dismiss filed by defendant Phillips Petroleum Company, August 29, 1947.
14. Amended motion to dismiss filed by defendant The Firestone Tire and Rubber Company, August 29, 1947.
15. Amended motion to dismiss filed by defendant Mack Manufacturing Corporation, August 29, 1947.
16. Joinder of defendant General Motors Corporation in amended motion, filed September 2, 1947.
17. Joinder of defendant Standard Oil Company of California in amended motion, filed September 2, 1947.
18. Affidavit of Jesse R. O'Malley, filed September 3, 1947.
19. Affidavit of H. H. Hollinger, filed September 11, 1947.
20. Affidavit of Joseph Thomas, filed September 11, 1947.
21. Affidavit of C. Frank Reavis, filed September 11, 1947.
22. Reply affidavit of C. Frank Reavis, filed September 15, 1947.
23. Reply affidavit of E. Roy Fitzgerald, filed September 15, 1947.
24. Letter to Judge Leon R. Yankwich, filed September 18, 1947.
25. Order on motions, filed September 29, 1947.
26. Opinion of Judge Yankwich, filed September 29, 1947.
27. Findings of fact and conclusions of law, filed October 15, 1947.
28. Government's objection to findings of fact, filed October 15, 1947.
29. Judgment, filed October 15, 1947.
- 305 30. Certified copies, filed November 4, 1947, of motion to transfer and affidavits in criminal action 19270, Southern District of California, Central Division, incorporated by reference in the affidavit of Jackson W. Chance, filed in this cause on August 28, 1947, and including motion to transfer said criminal cause, affidavit of E. Roy Fitzgerald in support thereof, affidavit of Jesse R. O'Malley in opposition to motion to transfer and reply affidavit of E. Roy Fitzgerald.

31. Petition for appeal.
32. Assignment of errors and prayer for reversal.
33. Statement as to jurisdiction.
34. Order allowing appeal.
35. Citation.
36. Statement calling attention to the provisions of Supreme Court Rule 12 (3).
37. Praecipe for transcript of record.

John F. Sonnett,
 JOHN F. SONNETT,
Assistant Attorney General.
 William C. Dixon,
 WILLIAM C. DIXON,
Special Assistant to the Attorney General.
 Jesse R. O'Malley,
 JESSE R. O'MALLEY,
Special Attorney.

Dated this 3d day of December 1947.

- 306 In the District Court of the United States for the
 Southern District of California, Central Division

[File endorsement omitted.] :

[Title omitted.]

Counter praecipe

Filed Dec. 13, 1947

*To the Clerk, United States District Court, Southern District of
 California, Central Division:*

Appellee National City Lines, Inc., hereby directs that in preparing the record in the above-entitled cause for plaintiff's appeal to the Supreme Court of the United States, you include the affidavit of C. W. Haseltine, filed August 7, 1947, with the motion of defendant Mack Manufacturing Corporation.

Dated this 12th day of December 1947.

— O'MELVENY & MYERS,
 By JACKSON W. CHANCE,
*Attorneys for defendant and
 appellee National City Lines, Inc.*

- 307 STATE OF CALIFORNIA,
County of Los Angeles, ss:

Richard P. Roe, being first duly sworn, deposes and says:

That affiant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles,

over the age of eighteen (18) years, and not a party to or interested in the within action; that affiant's business address is 900 Title Insurance Building, 433 South Spring Street, Los Angeles 13, California;

That on December 13, 1947, affiant served the within counter praecipe upon counsel named below by depositing a true copy thereof in a United States mail box at Los Angeles, California, in a sealed envelope with postage thereon fully prepaid and addressed as follows: William C. Dixon, Jesse R. O'Malley, Robert J. Rubin, and Leonard M. Bessman, Anti Trust Division, Department of Justice, 1602 U. S. Postoffice and Courthouse, Los Angeles 12, California.

That there is a regular communication by mail between the place of mailing and the place so addressed.

RICHARD P. ROE.

Subscribed and sworn to before me this 13th day of December.

[SEAL]

AGNES E. SHULTZ.

Notary Public in and for said
County and State.

308 [Clerk's certificate to foregoing transcript omitted in
printing.]

310 In the Supreme Court of the United States

October Term, 1947

No. 544

THE UNITED STATES OF AMERICA, APPELLANT

v.

NATIONAL CITY LINES, INC., ET AL.

On Appeal from the District Court of the United States for the
Southern District of California

*Statement of points to be relied upon and designation of parts of
the record necessary for consideration thereof*

Filed Feb. 12, 1948

1. Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely in its appeal in this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. The entire record in this cause as filed in this Court pursuant to the appellant's praecipe to the Clerk of the United States Dis-

trict Court for the Southern District of California is necessary for the consideration of the foregoing points and appellant designates said entire record for printing by the Clerk of this Court.

PHILIP B. PERLMAN,
Solicitor General.

Dated February 12, 1947.

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In the Supreme Court of the United States

October Term, 1947

No. 544

THE UNITED STATES OF AMERICA, APPELLANT

v.

NATIONAL CITY LINES, INC., ET AL.

*On Appeal From the District Court of the United States for the
Southern District of New York*

Counterdesignation of parts of record

Filed Feb. 16, 1947

Now comes the Appellee, National City Lines, Inc., and for its counterdesignation of parts of the record to be printed by the Clerk of This Court, designates the paper referred to in the counterpraecipe to the Clerk of the United States District Court for the Southern District of California as being material for a proper consideration of the issues involved in this appeal.

HODGES, REAVIS, PANTALEONI & DOWNEY,
By MARTIN D. JACOBS,

*Attorneys for Appellee,
National City Lines, Inc.*

Dated February 13, 1948.

312

Supreme Court of the United States.

No. 544—, October Term, 1947

THE UNITED STATES OF AMERICA, APPELLANT

VS.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., ET AL.

Order noting probable jurisdiction

Feb. 9, 1948. -

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

FEBRUARY 9, 1949.

[Endorsement on cover:] File No. 52774. Southern California, D. C. U. S. Term No. 544. The United States of America, Appellant vs. National City Lines, Inc., American City Lines, Inc., Pacific City Lines, Inc., et al. Filed January 20, 1948. Term No. 544 O. T. 1947.

**In the District Court of the United States
for the Southern District of California,
Central Division**

Civil Action No. 6747-Y

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATIONAL CITY LINES, INC., ET AL., DEFENDANTS

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause on October 15, 1947. A petition for appeal is presented to the district court herewith, to wit, on December 3, 1947.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat.

(1)

823; 36 Stat. 1167; 58 Stat. 272; 15 U. S. C. 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938; 28 U. S. C. 345).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Associated Press v. United States*, 326 U. S. 1; *United States v. Crescent Amusement Co.*, 323 U. S. 173; *Interstate Circuit, Inc. v. United States*, 306 U. S. 208.

STATUTES INVOLVED

The pertinent provisions of Sections 1, 2, 4, and 5 of the Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C. 1, 2, 4, 5) commonly known as the *Sherman Act*, are as follows:

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal:
* * * Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor,
* * *

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor,
* * *

SEC. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Section 12 of the Act of October 15, 1914, 38 Stat. 736, 15 U. S. C. 22, known as the Clayton Act, provides as follows:

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

THE ISSUES AND THE RULING

This is an equity suit brought by the United States in the Federal District Court for the

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Southern District of California, Central Division, charging 9 corporations with conspiring to acquire control of a substantial number of local transportation companies in various cities of the United States, and to monopolize and restrain commerce in busses, tires, tubes, and petroleum products sold to those local transportation companies, in violation of Sections 1 and 2 of the Sherman Act.

All of the defendants moved to dismiss the complaint on the ground that the District Court for the Southern District of California was not a convenient forum in which to try the cause and that the District Court for the Northern District of Illinois, Eastern Division (Chicago) was the most convenient forum. After the filing of supporting and opposing affidavits and oral argument, the district court rendered an opinion granting the motion to dismiss, basing its action on the doctrine of *forum non conveniens*.¹

The complaint asserts the following: Three of the nine defendants, National City Lines, Inc., and its subsidiaries, American City Lines, Inc., and Pacific City Lines, Inc., own or control a

¹ On the day before the complaint was filed, a grand jury for the Southern District of California returned an indictment charging a similar offense against the same corporate defendants. On defendants' motion, the district court transferred the criminal case to the Northern District of Illinois, Eastern Division, pursuant to Rule 21 (b) of the Rules of Criminal Procedure. The opinion of the court is set forth in 7 F. R. D. 393.

number of local transportation companies operating streetcars and motorbusses in more than 42 cities and governmental subdivisions of 16 states of the United States, including 10 named cities of California. The other six defendants, sometimes called the "supplying defendants," are corporations variously engaged in the production and sale of busses, tires, tubes, or petroleum products. Pursuant to a conspiracy, the supplying defendants have advanced funds, aggregating almost \$10,000,000 since 1939, to the other three defendants for the acquisition of local transportation companies, and the latter defendants have caused the local companies to purchase substantially all needed supplies of busses, tires, tubes, and petroleum products from the supplying defendants to the exclusion of products of competitors.

The defendants and their states of incorporation and principal places of business are as follows:

Corporation	State of organization	Principal place of business
National City Lines, Inc.	Delaware	Chicago.
American City Lines, Inc.	do.	Do.
Pacific City Lines, Inc.	do.	Oakland.
Standard Oil Co. of California	do.	San Francisco.
Federal Engineering Corp.	California	Do.
Phillips Petroleum Co.	Delaware	Bartlesville, Okla.
General Motors Corp.	do.	Detroit, Mich.
Firestone Tire & Rubber Co.	Ohio	Akron, Ohio.
Mack Manufacturing Corp.	Delaware	New York.

Affidavits filed on behalf of National in support of its motion to dismiss asserted that great and

undue hardship and expense would result from trial of the cause in Los Angeles. National was said to be the central defendant in that its relations with the other defendants constituted the core of the complaint. These relations were stated to be based upon contracts negotiated primarily in Chicago from which point National and its interests have always been managed and supervised and where its officials, employees, and files were located. Transportation of numerous officials and great masses of documents from Chicago to Los Angeles for a possibly protracted trial would, it was averred, occasion great hardship. Affidavits on behalf of other defendants asserted that their main defense resided with National whose convenience should therefore be paramount; and Firestone and Mack, of the supplying defendants, further averred that their respective home offices were substantially nearer Chicago than Los Angeles and that their individual convenience would likewise be promoted.²

² The district court rendered its opinion ordering transfer of the criminal case while the motions for dismissal of the civil complaint were pending. Transferral of the criminal case to the Northern District of Illinois was averred by defendants to be an additional reason of great importance why the Southern District of California was an inconvenient forum for trial of the civil cause. The Government urged that the defendants were not in a position to complain that hardship resulted to them by reason of the granting of their own motion to transfer the criminal action and, moreover, that seven individuals, officers of the corporate defendants, were joined as defendants in the latter cause and that the

Affidavits filed on behalf of the United States averred that the Government expected to establish proof of conspiracy by proving a series of agreements negotiated in California, by calling a substantial number of witnesses from the Pacific Coast area, and by introducing a large amount of documentary evidence from companies doing business in the Pacific Coast area. The Government further averred that National's operations were decentralized, with Pacific Coast operations under the supervision of a National vice-president resident in Los Angeles; that assets of National in local operating companies in Los Angeles and the San Francisco area exceeded the total assets of all so-called "Chicago operated companies"; that the volume of defendants' purchases and sale of busses, tires, tubes, and petroleum products was far greater on the Pacific Coast than in any other area of the country; and that the flowering of the conspiracy was effected by National's acquisition of the Los Angeles transit system as to which the Government expected to offer detailed proof locally available.

The district court, after recognizing that the present cause was brought under the special venue provision of the Clayton Act (*infra*, p. 4), decided that under the rulings of this Court there was scope for application of the doctrine of *forum* protection of their rights may have importantly influenced the court's determination to effect the transferral of the criminal action.

non conveniens under both general and special venue statutes unless, in the case of a special venue statute, its legislative history showed congressional intention to confer an absolute right of venue. After stating that no such intention was apparent from the legislative history of the Clayton Act, the court decided that the nature of the action and an analysis of the facts presented in the affidavits established the inconvenience for the defendants of the Southern California forum.¹ The court indicated that the supposed lack of inconvenience to the Government resulting from the dismissal and the nature of the relief requested (which, if granted, might involve continuing administration of what the court considered a business substantially conducted from Chicago) were additional considerations motivating its conclusion.

THE QUESTIONS ARE SUBSTANTIAL

Section 12 of the Clayton Act is a special venue statute applicable to cases brought under the Federal antitrust laws (*Eastman Co. v. Southern Photo Co.*, 273 U. S. 359, 372). It provides that any such action against a corporation "may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts busi-

¹ The district court referred to and substantially relied upon its more detailed analysis of the facts in its opinion in the criminal action.

ness." We interpret the decision of this Court in *Gulf Oil Co. v. Gilbert*, 330 U. S. 501, as clearly recognizing that there is no scope for application of the doctrine of *forum non conveniens* under a special venue statute. See also *Baltimore & Ohio Ry. v. Kepner*, 314 U. S. 44; *Miles v. Illinois Central Ry.*, 315 U. S. 698. Where Congress has authorized legal actions under particular statutes and has fixed the venue of such actions by special provision, courts are not free to refuse to exercise their jurisdiction by applying the doctrine.

The district court's conclusion that, even under concededly special venue provisions, the doctrine of *forum non conveniens* may be applied unless the legislative history of the provision discloses congressional intent to the contrary, is manifestly erroneous. The legislative intent of the venue provision here in question is plain from the provision itself and no resort to underlying legislative history is required or permitted. If the legislative history is to be examined, then it is apparent from that source also that Congress intended to prescribe an absolute right of venue in antitrust cases. See, e. g., 51 Cong. Rec. 9415.

In addition to the impropriety of the district court's ruling on the applicable legal principles, we submit that it clearly erred in concluding that the facts of this case provide an appropriate basis for application of the doctrine of *forum non conveniens* as a ground for dismissing the complaint.

In the case of a nation-wide conspiracy engaged in by large corporate defendants operating in many states, it is highly improbable that any forum could be chosen which would not involve the transportation of witnesses and documents over substantial distances and which would not in some respects or as to some defendants be less convenient than another. The facts here disclose that the conspiracy charged against defendants had its most significant manifestations in or conveniently near the forum in which the action was commenced, and that the means of proving or disproving the alleged conspiracy are available to a substantial degree from witnesses or documents in the forum chosen.

If the standards enunciated in this case are to govern, then the Government might have great difficulty in antitrust actions in finding a forum sufficiently convenient for trial of the cause. Undoubtedly it will mean that the Government will frequently find it necessary to bring one or more lawsuits solely to find out where it will eventually be permitted to try its cause.

Respectfully submitted.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

DECEMBER 1947.

**In the District Court of the United States,
Southern District of California, Central
Division**

Honorable LEON R. YANKWICH, Judge

No. 6747-Y Civil

UNITED STATES OF AMERICA, PLAINTIFF

v.

**NATIONAL CITY LINES, INC., AMERICAN CITY LINES,
INC., PACIFIC CITY LINES, INC., FIRESTONE TIRE
& RUBBER COMPANY, GENERAL MOTORS CORPORA-
TION, PHILLIPS PETROLEUM COMPANY, MACK
MANUFACTURING CORPORATION, STANDARD OIL
COMPANY OF CALIFORNIA, FEDERAL ENGINEERING
CORPORATION, DEFENDANTS**

OPINION

APPEARANCES

**For the government: Tom C. Clark, Attorney
General of the United States; John F. Sonnett,
Assistant Attorney General; William C. Dixon,
Special Assistant to the Attorney General; Robert
L. Rubin, Special Assistant to the Attorney Gen-
eral; James E. Kilday, Special Assistant to the
Attorney General; Jesse R. O'Malley, Special At-
torney; Leonard M. Bessman, Special Attorney;
James M. Carter, United States Attorney.**

For the defendants: National City Lines, Inc., American City Lines, Inc., Pacific City Lines, Inc., by Hodges, Reavis, Pantaleoni & Downey, New York; O'Melveny & Myers, Louis W. Myers, Pierce Works, Jackson M. Chance, Los Angeles, California. Firestone Tire & Rubber Co., by Joseph Thomas, Akron, Ohio; Haight, Trippet & Syvertson; Oscar A. Trippet, Frank B. Yoakum, Sr., Los Angeles, California. General Motors Corporation, by Cosgrove, Clayton, Cramer & Diether, T. B. Cosgrove, Leonard A. Diether, Los Angeles, California. Phillips Petroleum Company, by Finlayson, Bennett, & Morrow, H. T. Morrow, Los Angeles, California. Mack Manufacturing Corporation, by Wright & Millikan, Charles E. Millikan, Los Angeles, California. Standard Oil Company of California, Federal Engineering Corporation, by Lawler, Felix & Hall, John M. Hall, Los Angeles, California.

YANKWICH, *District Judge:*

I

THE NATURE OF THE PROCEEDINGS

On August 14, 1947 (1), in *United States v. National City Lines, et al.*, I transferred to the Northern District of Illinois, Eastern Division, a criminal antitrust prosecution instituted against the nine corporate defendants involved in this suit and seven individuals. The ruling was made under the provision for change of venue contained in the Federal Rules of Criminal Procedure (2).

In the present suit, I am asked to dismiss a Complaint in equity instituted by the Government

under Section 4 of the 'Sherman Anti-Trust Law (3). The factual background of the two cases is the same.

The States of organization of the defendants are as follows: National City Lines, Inc., Delaware; American City Lines, Inc., Delaware; Pacific City Lines, Inc., Delaware; Standard Oil Company of California, Delaware; General Engineering Corporation, California; Phillips Petroleum Company, Delaware; General Motors Corporation, Delaware; Firestone Tire & Rubber Company, Ohio; Mack Manufacturing Corporation, Delaware.

The Government claims that all the defendants except Phillips do business in the district or are to be found in it. However, the affidavits on file show conclusively that only three of the defendants do business or are found in the district—Standard, General Motors, and Firestone. The chief defendants, *through whom control is exercised*—National and American—have always had their main offices in Chicago, Illinois, where all their records are kept.

In substance, the Government charges that National and its subsidiaries, American and Pacific, own and control, or have a substantial financial interest in corporations which are referred to as "operating companies," and which are engaged in providing local transportation service in more than forty-two cities in sixteen States.

The operating companies of the defendants National, American, and Pacific use large quantities of busses, tires, tubes, and petroleum products, which are manufactured and handled by the supplier defendants, such as Phillips, Standard, Gen-

eral Motors, Mack, and Firestone. The Government charges that, beginning on or about January 1, 1937, and continuing to the filing of the Complaint on April 10, 1947, the defendants have engaged in an unlawful combination and conspiracy to acquire ownership, control, or a substantial financial interest in a substantial part of local transit companies in various cities, towns, and counties in various States of the United States and

to restrain and to monopolize the aforesaid interstate commerce in motor busses, petroleum products, tires and tubes sold to local transportation companies in cities, counties and towns in which National, American, and Pacific have, or have acquired, or in the future acquire, ownership, control or a substantial financial interest in said local transportation companies, all in violation of Sections 1 and 2 of the Sherman Anti Trust Act. Defendants threaten to and will continue to violate Sections 1 and 2 of the Sherman Anti Trust Act unless the relief hereinafter prayed for is granted.

The means of achieving this result are stated to be these: "Supplier" defendants have furnished money and capital to National, American and Pacific who have, in turn, caused their operating companies to purchase practically all their requirements in tires, tubes, petroleum products and busses from the supplier defendants to the exclusion of products competitive with them. Money made available by the supplier defendants was used to acquire control of local transit companies through the operating companies. National, American, and Pacific would not renew

contracts with others for the purchase or rental of materials and equipment without the consent of the supplier defendants. When an operating company was sold, National, American, and Pacific would require the new owner to assume the burden of the contracts for the exclusive purchase of equipment and supplies. No change of type of equipment or conversion to another type would take place without the consent of the supplier defendants. The business of dealing in such supplies and equipment would be allocated to the supplier defendants in an artificial, arbitrary and uncompetitive manner. Between January 1, 1939, and the date of the filing of the Complaint, the amounts of stock purchased by the supplier defendants in National, American, and Pacific were as follows:

Name of supplier defendant:	Amount paid for stock purchased
Standard Oil Company of Calif., Federal Engineering Corporation.....	\$2,074,310.57
General Motors Corporation.....	3,190,802.32
Phillips Petroleum Company.....	1,574,064.82
Firestone Tire & Rubber Company.....	1,383,408.41
Mack Manufacturing Corporation.....	1,300,071.48

The effect of the combination and conspiracy, the Complaint avers, is to eliminate competition from other suppliers in the sale of supplies and equipment to National, American, and Pacific and their operating companies, and to restrain interstate commerce in such equipment substantially and unreasonably, so far as the transportation companies controlled by National, American, and Pacific are concerned, to charge non-competitive prices for such equipment and to allocate the nation-wide markets of the defendants National,

American and Pacific and their operating companies for supplies and equipment between the various supplier defendants. To end these practices, the Government seeks a decree declaring that the defendants are engaged in a conspiracy in violation of the Sherman Act, that the supplier defendants be required to divest themselves of stock and other interests in the traction companies, that contracts between the parties be declared void, and that the traction and operating companies be enjoined from acquiring their equipment from the suppliers. In addition to this, the following more specific prayers are included which are set forth in full because of their significance in the discussion to follow:

5. That the defendants National, American, and Pacific be ordered to make such disposition of their interests and holdings in local transportation companies as is necessary to restore competition and to dissipate the effects of the unlawful conspiracy; and that defendants National, American and Pacific be permanently enjoined from acquiring, directly or indirectly, any financial interest in any local transportation system operating in any city, town or county of any State of the United States without first obtaining the approval and authority of this Court;

6. That the defendants herein and each of them and their officers, directors and representatives and all persons and corporations acting or claiming to act on behalf of them be perpetually enjoined and restrained from combining and conspiring to monopolize or to restrain interstate trade

and commerce of the United States in the manner and by the means described herein, and be perpetually enjoined from engaging in or participating in agreements, understandings, practices or arrangements having a tendency to revive or continue any of the aforesaid violations of the Sherman Anti Trust Act."

The defendants have moved to dismiss the Complaint upon the ground of inappropriate forum. Their motions bring into play the doctrine of forum non conveniens.

II

THE DOCTRINE OF FORUM NON CONVENIENS

The doctrine of forum non conveniens is not of statutory origin. In Anglo-American law, it has been used as a means of declining jurisdiction whenever "considerations of convenience, efficiency, and justice" (4) point to another tribunal than that chosen by a litigant as the appropriate tribunal. And courts of equity will "go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved" (5).

This doctrine which permits a court having jurisdiction to refuse to exercise it has been applied either under its Latin name, forum non conveniens, or under its truncated English name, inappropriate forum, in many cases arising in Admiralty (6) and in Equity (7).

The problem before us must be solved in the light of the principles which have governed its application.

In each instance, the Court which declined to exercise jurisdiction had jurisdiction and the plaintiff had a choice of venue. Thus, when, under a statute, jurisdiction in a proceeding to limit liability could be brought in either the state court or the federal court, the federal court, in its discretion, could enjoin the prosecution of the action in the state court (8). And when a stockholders' suit relating to the affairs of a corporation could properly be brought in either the state or the federal courts, it was held the federal district court could, in its discretion, dismiss the suit (9).

The more recent cases of the Supreme Court applying this doctrine must be interpreted in the light of these principles (10). Indeed, the nub of the controversy between the parties here is as to the meaning of these cases, and especially the *Gulf* and *Koster* cases (11).

It is the Government's contention that these cases lay down a distinction between general-venue and special-venue statutes and that the doctrine of *forum non conveniens* does not apply to cases in which the Congress, by a *special-venue statute*, has given to the plaintiff the choice of forums.

None of these cases define the difference between the two types of venue statutes.

It is evident, however, that a general venue statute would be exemplified by the provisions of the Judicial Code to the effect that actions shall generally be brought against a person only in the district of which he is a resident, or, in diversity cases, in the district of the residence of either the plaintiff or the defendant (12). The mere existence of a choice of forums does not, as the cases already cited, (13) indicate, make a statute one of special venue. Special venue statutes are statutes in which the Congress has legislated with reference to a particular kind of actions and has decreed that they might be brought in several forums, in some of which they could not be brought but for such legislation. Illustrative are: actions relating to copyrights (14), patent infringements (15), actions for the recovery of taxes under the Internal Revenue Act (17), and stockholder's derivative suits (18). Of the same type is the special venue provision of the Federal Employer's Liability Act (19). This Act gives to an injured employe a choice of three places where he might bring his action: (1) the district of the defendant's residence; (2) the district where the cause of action arose, and (3) the district in which the defendant is doing business at the time when the action is begun.

Concededly suits like the present one, instituted by the Government to enjoin violations of the Sherman Anti Trust Act, are also governed by a special venue provision. Under it, such suits may

be brought in the judicial district (1) where the corporation is an inhabitant, (2) in the district where it may be found, or (3) in the district where it transacts business (20).

III

DOES THE DOCTRINE OF INAPPROPRIATE FORUM APPLY TO ACTIONS BROUGHT UNDER SPECIAL VENUE STATUTES?

It is the contention of the Government that when an action is governed by a special venue provision, the choice of forum by the actor in the case, be he individual or government, is absolute, and the doctrine of inappropriate forum is inapplicable.

There is a language in the *Gulf* case which, at first blush, lends support to this contention. I so read the case myself and gave expression to the thought in a recent opinion (21). The language reads:

It is true that in cases under the Federal Employer's Liability Act we have held that plaintiff's choice of a forum cannot be defeated on the basis of *forum non conveniens*. But this was because the *special venue* act under which the cases are brought, was believed to require it. *Baltimore & Ohio R. R. v. Kepner*, 314 U. S. 44; *Miles v. Illinois Central R. R.*, 315 U. S. 698. Those decisions do not purport to modify the doctrine as to other cases governed by the *general venue* statutes (22). [Italics added.]

This language must be studied in the light of the cases to which the Supreme Court was re-

ferring, the *Federal Employer's Liability* cases (23), and of the opinion delivered on the same day in the *Koster* case and written by the same Justice (24).

When passed in 1908, the Federal Employer's Liability Act contained no special venue provisions. In 1910, it was amended to allow the present choice. Even before the decisions in the *Kepner* (25) and *Miles* (26) cases, lower federal courts had held that the privilege of venue conferred by this section was absolute and not subject to the discretionary power of the courts to nullify the choice upon any ground (27). Writers have inveighed against the unfairness of allowing so wide a choice (28). Occasionally even a trial judge has expressed regret at his inability to grant relief in such cases (29). And there is now pending a Bill before the Congress to limit the exercise of the right of the employe to choose the forum (30). But, except during the First World War, when the Director General of the Railroads, under his war powers, issued an order providing that suits should be brought only in the district where the plaintiff resided at the time of the accrual of the action, or where the cause of action arose—an order which received the approval of the Supreme Court (31)—there has been no deviation from this strict interpretation of the venue provision. And when the Supreme Court adopted, in the *Kepner* and *Miles* cases, this rigorous interpretation of the statute, it

merely continued the tradition which had been inaugurated by the lower courts. They all saw in the special venue provision of this particular law a *direct* mandate of the Congress which left no room for variation. This is quite evident from the following language in the concurring opinion of Mr. Justice Jackson in the *Miles* case:

The functioning of this backward system of dealing with industrial accidents in interstate commerce burdens it with perhaps two dollars of judgment for every dollar that actually reaches those who have been damaged, and it leaves the burden of many injuries to be borne by them utterly uncompensated. Such being the major burden under which the workmen and the industry must function, I see no reason to believe that Congress could not have intended the relatively minor additional burden to interstate commerce from *loading the dice a little in favor of the workman* in the matter of venue. It seems more probable that Congress intended to give the disadvantaged workmen some leverage in the choice of venue, than that it intended to leave him in a position where the railroad could force him to try one lawsuit at home to find out whether he would be allowed to try his principal lawsuit elsewhere. This latter would be a frequent result if we upheld the contention made in this case and in the *Kepner* case (32). [Italics added.]

This concurring opinion has a special significance because, with four justices dissenting, there would be no majority opinion without it. Added

significance is given to this language by the fact that Mr. Justice Jackson also wrote the majority opinions in the *Gulf* and *Koster* cases. And, because the question here turns on the meaning of the language already quoted in the *Gulf* case, the historical review which we have just given is of utmost significance. It shows clearly that what Mr. Justice Jackson, speaking for the majority of the court, meant to say was not that *any* special venue act excluded the application of the doctrine of inappropriate forum, but that *the particular special venue statute under consideration*, in the light of its history, excluded the application of the doctrine. And this is also apparent from a consideration of the opinion of Mr. Justice Jackson in the *Koster* case. That case involved an action brought under a special venue statute which is a part of Section 51 of the Judicial Code (33) and which reads:

except that suit by a stockholder on behalf of a corporation may be brought in any district in which suit against the defendant or defendants in said stockholders' action, other than said corporation, might have been brought by such corporation and process in such cases may be served upon such corporation in any district wherein such corporation resides or may be found.

That this is a special venue statute is evident not only from its wording but also from the following language which appears in Footnote 2 of the opinion in the *Koster* case (36):

This reinforces the view that the cause of action is that of the corporation, if reinforcement is necessary. Moreover, it is obvious that the venue statute is not concerned with facilitating suit in the district of the stockholder's residence, but assures only that suit can be brought in any district in which the corporation can be sued. *Greenberg v. Giannini*, 140 Fed. (2) 550. When suit is brought in the district of the stockholder's residence, the venue statute does not provide for service on the corporation "in any district wherein such corporation resides or may be found." Since the corporation is an indispensable party, *Davenport v. Dows*, 18 Wall. 626, it must be only the chance stockholder's suit which can be maintained at the stockholder's residence. Corporations which have stockholders in many of the states may not find it necessary to qualify to do business and consent to be sued in all the states in which they have stockholders.

It is quite evident that, if the *Gulf* case is interpreted as holding that the doctrine of forum non conveniens does not apply to actions brought under special venue statutes, the ruling in the *Koster* case does not accord with it. For, as already appears from what precedes, there the court, although dealing with a special venue statute, nevertheless applied the doctrine to the situation. The two decisions made on the same day, in opinions written by the same Justice, can be reconciled only if we read the teaching of the *Gulf* case as here suggested—namely, that the court refused to apply the doctrine of forum non

convenience to *Federal Employer's Liability* cases, not because such cases are governed by a *special venue statute*, but for the reason that the history of the law, the desire of the Congress to overbalance the privileges under the law in favor of the railroad employees, made the choice under the particular venue statute absolute.

So the discussion, which precedes may be summed up in this manner:

The doctrine of inappropriate forum can be applied by courts in all cases in which it has been applied in the past in Anglo-American jurisprudence. And this should be done, whether dealing with a general or with a special venue statute. Only when the legislative history shows an intent to confer a right so absolute as to exclude any interference on the part of courts, are we justified in failing to give effect to this doctrine.

IV

THE VENUE HERE

We have already referred to the venue provision in the Sherman Antitrust Act (36). The power of the Congress to enact such provision is undisputed (37). But there is nothing in its legislative history to indicate that the Congress, by giving to the Government a choice of forums, intended to deprive the courts of their right to forbid resort to an inappropriate forum.

That the Congress did not intend to make the

Government's choice absolute is also evidenced by the provision of the Act which reads (38):

Whenever it shall appear to the court before which any proceeding under Section 4 of this title may be pending, *that the ends of justice require* that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof. [Italics added.]

Had the Congress intended to give to the Government complete mastery over the situation, it certainly would not have made the presence of other parties dependent upon the determination by the court that the ends of justice require such presence. Of the nature of this power, a three-judge court said in *United States v. Standard Oil of New Jersey* (39):

The question presented by the petition for that purpose was, not in which court the ends of justice required the complainant to choose to institute its suit, but whether or not in this suit the ends of justice required that the non-resident defendants should be brought in.

The exercise of the power conferred upon the courts by the Constitution and the acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of their process, is not discretionary with the courts, when a complainant demands it. It is an imperative duty, which may not be renounced, and whose discharge may not be evaded. It is the duty of a

court of equity to finally determine the entire controversy before it, and to do complete justice by adjusting all the rights involved therein. Hence, in every suit in which the power to acquire jurisdiction of the subject-matter and of the parties is conferred upon the court, the duty is imposed upon it, if its discharge is invoked by the complainant, to summon and hear, before decision, not only every indispensable party, but every necessary party within reach of its process, every party who has an interest in the controversy, and who ought to be made a party to the suit in order that the court may finally adjudicate the whole matter, although if he were not amenable to process, final justice might be administered between the other parties without his presence.

In giving effect to public policy through suits of this character, courts are more likely to grant or withhold relief than in dealing with private interests (40).

That the facts in this case call for the application of the doctrine of *forum non conveniens* is apparent from the nature of the action and from the analysis of the facts presented in the affidavits which I made in the companion criminal prosecution (41). Practically the same affidavits are before me now. They show that the trial of the case in this district would require the chief defendants to go to places distant from the location of their business, to bring witnesses from afar, to move into this district records which are located in distant cities where their headquarters are

maintained, and, in case the decree asked for by the Government is made, it will call for control of foreign corporations over a long period of years by a court which is far removed from the principal places of business of the main defendants. Indeed, the very allegations of the Complaint indicate that National and American were the instrumentalities through which this monopoly is established, that they, especially National, are responsible for the tie-ins, through acquisition of stock by the suppliers, and for the monopolistic practices which *they and not the local operating companies* engineered with the suppliers and through which the throttling of competition in supplies and equipment, of which the Government complains, is achieved.

We should also emphasize the fact, already adverted to elsewhere in this opinion, that the Government by the decree it asks in this case, is seeking to wrest control of local transportation companies from National, American, and Pacific and to require them to divest themselves of such control. And *this type of long distance control of corporations who are not engaged in business in the state* is one of the considerations which have led to the application of the doctrine of forum non conveniens.

The language of the court in *Williams v. Green Bay W. R. R.*, is very apposite (42):

We mention this phase of the matter to put the rule of forum non conveniens in

proper perspective. It was designed as an "instrument of justice." Maintenance of a suit away from the domicile of the defendant—whether he be a corporation or an individual—might be vexatious or oppressive. An adventitious circumstance might land a case in one court when in fairness it should be tried in another. *The relief sought against a foreign corporation may be so extensive or call for such detailed and continuing supervision that the matter could be more efficiently handled nearer home.* [Italics added.]

Of the nine defendants, five—National, American, Pacific, Mack, and Phillips—are not doing business in California and are not to be found in it. Federal Engineering merely makes investments for Standard, does no business in the district, and is not found in it. The control by National of the Los Angeles Transit Lines and of Long Beach City Lines, through ownership of their corporate stock, does not constitute "doing business" in the State (43).

It follows that the factual situation here calls for the application of the doctrine of forum non conveniens, in the interest of justice, just as the same facts in the companion criminal prosecution required its transfer to another district. And this conclusion is also commanded by the fact that the decree sought by the Government will require control of the parent companies, National and American, over a long period of time, by a court far removed from their domiciles.

The Government has suggested that a dismissal of this Complaint might bring about an impossible situation. They refer to the fact that the principal places of business of the defendants are scattered throughout the country. And they express the fear that no matter where the Government re-institutes its suit, some of the defendants might urge the application of the doctrine of inappropriate forum to them. The matter has received serious consideration. A court of equity should aim to balance societal and individual interests and to maintain the proper equilibrium between private rights and public weal (44). And, in applying a statute like the Sherman Antitrust Act embodying a Governmental policy of long standing, which aims to maintain in the economic field some semblance of equality and to prevent the hand of monopoly from suppressing or impeding the free flow of commerce between States, we should hesitate to adopt an approach to a problem like the one involved here which would result in quashing forever what the Government considers a meritorious suit.

But I feel that no disastrous result to the enforcement of the antitrust laws need, *necessarily*, follow a ruling adverse to the Government on this motion. Our action is reviewable on direct appeal to the Supreme Court, (45) within a maximum of sixty days after the entry of the final decree of dismissal. I am also of the view that this suit can

be refiled in the Northern District of Illinois, Eastern Division, where National and American have their principal place of business, and withstand any further attack on venue. More, under date of September 18, 1947, counsel for all the defendants have joined in a letter in which they state that all the defendants believe that the Northern District of Illinois, Eastern Division, to which the companion criminal prosecution has already been transferred, is the proper forum for this action and that if this motion is granted and the suit is refiled there, the defendants will not move for its dismissal on the ground of inconvenient forum. their request, the statement has been made a part of the record in this case.

In sum, whether the Government challenges this ruling and seeks a direct appeal to the Supreme Court within the sixty-day period, or accepting it, refiles, the "set-back" will be temporary only. And the insuccess of the Government being based not on the court's disapproval of the social philosophy behind the Sherman Antitrust law (46), but only on a disagreement as to the tactics in a particular case, which can be remedied readily, the Government's determination to enforce the statute vigorously will stand unaffected.

The motions to dismiss are granted.

Dated this 29th day of September 1947.

LEON R. YANKWICH,

Judge.

NOTES TO TEXT

1. *United States v. National City Lines, et al.*, 1947, D. C. Cal., 72 Fed. Sup. —.
2. Sec. 21 (b) Federal Rules of Criminal Procedure.
3. 15 U. S. C. A. 4.
4. *Rogers v. Guaranty Trust Co.*, 1933, 288 U. S. 123, 131.
5. *Virginian Ry. v. Federation*, 1937, 300 U. S. 515, 552.
6. *Langnes v. Green*, 1931, 282 U. S. 531; *Canada Malting Co. v. Paterson Co.*, 1932, 285 U. S. 413.
7. *Kansas City Southern Ry. Co. v. United States*, 1931, 282 U. S. 760, 763; *Rogers v. Guaranty Trust Co.*, 1932, 288 U. S. 123; *Virginian Ry. v. Federation*, 1937, 300 U. S. 515; *Massachusetts v. Missouri*, 1939, 308 U. S. 1, 19.
8. *Langnes v. Green*, 1931, 282 U. S. 531.
9. *Rogers v. Guaranty Trust Co.*, 1932, 288 U. S. 123.
10. *Williams v. Green Bay & W. R. Ry. Co.*, 1946, 326 U. S. 549; *Gulf Oil Corporation v. Gilbert*, 1947, 330 U. S. 501; *Koster v. Lumbermen's Mutual Co.*, 1947, 330 U. S. 519.
11. See cases in Notes 7 and 8.
12. 28 U. S. C. A. 112 (a) and (b).
13. See cases in Notes 7 and 8. And see, *Neirbro Co. v. Bethlehem Shipbuilding Corporation*, 1939, 308 U. S. 165.
14. 17 U. S. C. A. 35.
15. 28 U. S. C. A. 109. The language of Mr. Justice Brandeis in *Lumiere v. Wilder, Inc.*, 1923, 261 U. S. 174, 177, lends support to the view here expressed as to what a special venue statute is. Speaking of the special venue provision in copyright cases, he says:

"Ordinarily a civil suit to enforce a personal liability under a federal statute can be brought only in the district of which the defendant is an inhabitant. Judicial Code, No. 51. In a few classes of cases, a carefully limited right to sue elsewhere has been given. In patent cases it is the district of which the defendant is an inhabitant or in which acts of infringement have been committed and the defendant has a

regular and established place of business. Judicial Code No. 48: *W. S. Tyler Co. v. Ludlow-Saylor Co.*, 236 U. S. 723. In cases under the antitrust laws, it is where the defendant 'resides or is found or has an agent;' (Act of October 15, 1914, c. 323, No. 4, 38 Stat. 730, 731); and in the case of corporations, the 'district whereof it is an inhabitant' or 'any district wherein it may be found or transacts business.' "

16. 28 U. S. C. A. 105. The United States Court of Appeals for the District of Columbia has held that the doctrine of forum non conveniens is applicable to an action of this character. See *Urquart v. American-La France Foamite Corporation*, 1944, 144 F. (2) 542, 544.

17. 15 U. S. C. A. 77 (2).

18. 28 U. S. C. A. 112 (a).

19. 45 U. S. C. A. 56.

20. 15 U. S. C. A. 22.

21. *United States v. Standard Oil Co.*, decided on July 14, 1947, 72 Fed. Sup. —.

22. *Gulf Oil Co. v. Gilbert*, 1947, 330 U. S. 501.

23. *Baltimore & Ohio Ry. v. Kepner*, 1941, 314 U. S. 44; *Miles v. Illinois Central Ry.*, 1942, 315 U. S. 698.

24. *Kosterv. Lumbermen's Mutual Co.*, 1947, 330 U. S. 519.

25. *Baltimore & Ohio Ry. v. Kepner*, 1941, 314 U. S. 44.

26. *Miles v. Illinois Central Ry.*, 1942, 315 U. S. 698.

27. The following are among the Circuit Court cases in which the doctrine has been expounded: *Schendel v. McGree*, 1924, 300 Fed. 273; *Southern Ry. v. Cochran*, 1932, 56 F. (2) 1019; *Wood v. Delaware & H. R. Corporation*, 1933, 2 Cir., 63 F. (2) 255; *Chesapeake & Ohio Ry. v. Vigor*, 1937, 6 Cir. 90 F. (2) 7; *Southern Ry. Co. v. Painter*, 1941, 8 Cir. 117 F. (2) 100, 103, 106; and see, *Leet v. Union Pacific Co.*, 1944, 25 Cal. (2) 605, 609-610.

28. See *Thomas B. Gray*, Venue of Actions, 33 American Bar Association Journal, July 1947, page 659.

29. See the language of the late Judge Grover L. Moskowitz in *Sacco v. Baltimore & Ohio Ry. Co.*, 1944, D. C. N. Y., 56 Fed. Sup. 959.

30. H. R. 1639.

31. *Missouri Pacific Ry. v. Ault*, 1921, 256 U. S. 554; *Alabama etc. Ry. Co. v. Journey*, 1921, 257 U. S. 111.

32. *Miles v. Illinois Central Ry.*, 1942, 315 U. S. 698.

33. 28 U. S. C. A. 112.

34. *Koster v. Lumbermen's Mutual Co.*, 1947, 330 U. S. 519.

35. See cases in Notes 7 and 8.

36. 15 U. S. C. A. 22.

37. *Eastman Kodak Co. v. Southern Photo Co.*, 1927, 273 U. S. 359.

38. 15 U. S. C. A. 5.

39. 152 Fed. 290, 296. Counsel for the Government seem to think that this case teaches that the doctrine of *forum non conveniens* does not apply to antitrust cases. I do not so read it. It is to be borne in mind that the court was not asked to dismiss the action because of the choice of inappropriate forum. An order had been made by the Circuit Court to bring in the nonresident defendants. They moved to vacate the order and to quash the service of summons upon them. The court having exercised its judgment, having granted the order, and having determined that the ends of justice required the presence of the nonresident defendants, the matter was at an end. And the reviewing court, as the first sentence of the quotation says distinctly, *was not determining in which court the ends of justice requiring the complainant to institute its suit, but whether the ends of justice required that other defendants be brought in*. Clearly then, the question which confronts us here was not before the court in that case, and the ruling in it does not help the position of the Government in this case.

40. *Virginian Ry. v. Federation*, 1937, 300 U. S. 515, 552.

41. *United States v. National City Lines, et al.*, 1947, D. C. Calif., 72 Fed. Sup. —.

42. 326 U. S. 550.

43. *Peters v. Chicago, etc., Ry.*, 1907, 205 U. S. 364; *Philadelphia, etc., Ry. v. McKibbin*, 1917, 243 U. S. 264; *People's Tobacco Co., Ltd. v. American Tobacco Co.*, 1917, 246 U. S. 79, 87.

44. Roscoe Pound, *A Survey of Social Interests*, 1943, 57 *Harvard Law Review*, 1-39; Roscoe Pound, *Law and the State, Jurisprudence and Politics*, 1944, 57 *Harvard Law Review* 1193 et seq. Roscoe Pound, *A Survey of Public Interests*, 1945, 58 *Harvard Law Review*, 909-929.

45. 15 U. S. C. A. 29.

46. My attitude towards this law has been expressed in the following opinions: *United States v. Heating, Piping & Air Contr. Assn.*, 1940, D. C. Calif., 33 Fed. Sup. 978; *United States v. Food and Grocery Bureau*, 1942, D. C. Calif., 43 Fed. Sup. 966; *United States v. Food and Grocery Bureau*, 1942, D. C. Calif., 43 Fed. Sup. 974; *United States v. San Francisco Electrical Contractors Assn.*, 1944, D. C. Calif., 57 Fed. Sup. 57.

FILE COPY

No. 544

U.S. District Court, D.C.
FILED
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U.S. DEPT. OF JUSTICE
CLERK

Joint Petition of the United States

vs. **James Earl Ray**

The United States of America, Appellant,

James Earl Ray, Appellee,
James Earl Ray, Appellee.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

PRINTER FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 544

THE UNITED STATES OF AMERICA, APPELLANT

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC.,
PACIFIC CITY LINES, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (R. 134) is reported in 7 F. R. D. 456. The opinion of the district court in the related criminal proceeding against appellees (R. 91) is reported in 7 F. R. D. 393.

JURISDICTION

The decree of the district court was entered on October 15, 1947 (R. 162). Petition for appeal was filed on December 3, 1947, and was allowed the same day (R. 190). The jurisdiction of this Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of

the Expediting Act of February 11, 1903, as amended (32 Stat. 823, 36 Stat. 1167, 58 Stat. 272; 15 U. S. C., Supp. V, 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938; 28 U. S. C. 345). Probable jurisdiction was noted on February 9, 1948 (R. 195).

QUESTIONS PRESENTED

1. Whether the doctrine of *forum non conveniens*, if applicable at all to a civil suit by the United States under the antitrust laws, has any application to such a suit where, as here, there was substantial basis for the venue selected and, in addition, a proceeding therein will not impose any unwarranted burden upon the defendants or upon the court of the forum.

2. Whether the special venue provisions of Section 12 of the Clayton Act were intended by Congress to give to the plaintiff a choice of venue not defeasible upon the basis of *forum non conveniens*.

STATUTES INVOLVED

Sections 4 and 5 of the Act of July 2, 1890, 26 Stat. 209 (15 U. S. C. 4, 5) commonly known as the Sherman Act, provide as follows:

SEC. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at

any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Section 12 of the Act of October 15, 1914, 38 Stat. 730, 15 U. S. C. 22, known as the Clayton Act, provides as follows:

That any suit, action, or proceeding under the anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

STATEMENT

This is an equity suit brought by the United States in the Federal District Court for the Southern District of California, Central Division (Los Angeles), charging nine corporations with conspiring to acquire control of a substantial number of local transportation companies in various cities of the United States, and to restrain and monopolize commerce in busses, tires, tubes, and petroleum products sold to these local transportation companies, in violation of Sections 1 and 2 of the Sherman Act (R. 5).

All of the appellees moved to dismiss the complaint on the ground that the District Court for the Southern District of California was not a convenient forum in which to try the cause, and that the District Court for the Northern District of Illinois, Eastern Division (Chicago), was the most convenient forum. After the filing of supporting and

opposing affidavits and oral argument, the district court rendered an opinion holding that appellees' motion to dismiss should be granted (R. 134-145), and it entered judgment dismissing the complaint without prejudice to commencement of a similar suit against the named defendants in a more appropriate and more convenient forum (R. 162-163).

The states in which appellees are incorporated and their principal places of business are as follows (Eng. 1, R. 152),¹

<i>Corporation</i>	<i>State of Organization</i>	<i>Principal Place of Business</i>
National City Lines, Inc.	Delaware	Chicago
American City Lines, Inc.	"	"
Pacific City Lines, Inc.	"	Oakland
Standard Oil Co. of California	"	San Francisco
Federal Engineering Corp.	California	"
Phillips Petroleum Co.	Delaware	Bartlesville, Okla.
General Motors Corp.	"	Detroit, Mich.
Firestone Tire & Rubber Co.	Ohio	Akron, Ohio
Mack Manufacturing Corp..	Delaware	New York

The facts alleged in the complaint may be summarized as follows:

National is a holding company whose operations are directed from its office in Chicago, Illinois (R. 3). It and its subsidiaries, American and Pacific, own, control, or have a substantial financial interest in, a number of corporations engaged in providing local transportation service in more than 42 cities and governmental subdivisions of 16 different states (*ibid.*)² Such corporations will be sometimes referred

¹ Appellees will be hereafter referred to by the first word of their respective corporate titles, except that General Motors Corporation will be referred to as "General Motors"

² The cities include: Baltimore, Maryland; Tampa, Florida; Mobile, Montgomery, Alabama; Beaumont, Port Arthur, El Paso, Texas, Aurora, Elgin, Bloomington, Normal, Champaign, Urbana, Danville, Decatur, East St. Louis, Joliet, Quincy, Illinois; Terre Haute, Indiana; Jackson, Kalamazoo, Pontiac, Saginaw, Michigan; Canton, Portsmouth, Ohio; Burlington, Cedar

to as operating companies, and National, American and Pacific will be sometimes collectively called City Lines.

Five other appellees, which will be called the supplier appellees, are engaged in making certain products which they have sold to City Lines in the following amounts: General Motors, motorbusses in excess of \$25,000,000; Mack, motorbusses in excess of \$3,500,000; Firestone, tires and tubes now annually in excess of \$450,000; Phillips, petroleum products now annually in excess of \$900,000; Standard, petroleum products to companies operating in the States of California, Utah and Washington (R. 4-5).

The remaining appellee, Federal, is a wholly-owned subsidiary of Standard engaged in making and managing investments on behalf of Standard (R. 2).

Appellees have, as a part of their conspiracy, agreed upon the following things, among others: That the supplier appellees would furnish money and capital to National, American and Pacific, which these appellees would use to purchase or secure control of local transit systems; that City Lines would purchase substantially all its requirements of busses, tires, tubes, and petroleum products from the supplier appellees; that, without the consent of the interested supplier appellee, City Lines would not renew any contract for the purchase of such products from other than the supplier appellees and would not make any change in equipment involving use of such products of a type other than that sold by the supplier appellees; and that City Lines would not dispose of any interest in an operating company without requiring the purchaser to continue to obtain its requirements of such products from the supplier appellees (R. 5-6):

Rapids, Ottumwa, Iowa; Tulsa, Oklahoma; Lincoln, Nebraska; St. Louis, Missouri; Jackson, Mississippi; Salt Lake City, Utah; Everett, Spokane, Washington; Sacramento, Eureka, Fresno, Glendale, Pasadena, San Jose, Stockton, Los Angeles, Oakland and Long Beach, California (R. 3-4).

It has also been a part of appellees' conspiracy that the requirements of City Lines for busses, tires, tubes and petroleum products would be allocated among the supplier appellees as follows: To General Motors, about 85% of the busses required by the operating companies controlled as of August 2, 1939, and about 42.5% of the busses required by operating companies thereafter brought under National's control; to Mack, about 42.5% of the busses required by operating companies coming under National's control after August 2, 1939; to Standard, substantially all petroleum products required by companies operating on the Pacific Coast and adjacent areas; to Phillips, substantially all petroleum products required by companies operating in the Mid-West;³ to Firestone, substantially all requirements of tires and tubes (R. 7-8).

The supplier appellees have purchased stock in National, American, and Pacific, substantially all the proceeds of which purchases have been used to acquire control of or a financial interest in local transit systems (R. 7). The amounts paid for stock so purchased have been approximately as follows (*ibid.*):

<i>Supplier Appellee</i>	<i>Amount Paid for Stock</i>
Standard, Federal	\$2,074,310
General Motors	3,190,802
Phillips	1,574,064
Firestone	1,383,403
Mack	1,300,071

The Government in its prayer for relief requested that the supplier appellees be required to divest themselves of all stock or other financial interest in City Lines; that all existing sales or investment contracts between the

³ The Mid-West area referred to includes the States of Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, and South Dakota (R. 8).

supplier appellees and City Lines be voided; that City Lines be enjoined from purchasing busses, tires, tubes, or petroleum products without first advertising for competitive bids in accordance with a plan to be incorporated in any final order entered by the court; and that National, American and Pacific be ordered to make such disposition of their interests in local transportation companies as is necessary to dissipate the effects of appellees' conspiracy, and be enjoined from acquiring any further interest in any such company without first obtaining the approval of the court (R. 9).

The Government's complaint was filed in April, 1947 (R. 1). Motions to dismiss the complaint upon the ground of *forum non conveniens* and amended supplemental motions to dismiss were filed by all appellees in August and September, 1947.⁴ All of the motions were based upon the affidavits filed by City Lines in support of their motions and only Mack and Firestone filed separate supporting affidavits.⁵

⁴ Original motions to dismiss: Mack (R. 11), Standard and Federal (R. 22), City Lines appellees (R. 60-61), Firestone (R. 68), General Motors (R. 69), Phillips (R. 71).

Amended motions to dismiss: City Lines appellees (R. 73), Phillips (R. 105), Firestone (R. 106), Mack (R. 108), General Motors (R. 110), Standard and Federal (R. 111).

The amended motions gave as an additional reason for dismissing the complaint, that the district court had entered an order (R. 102-103) transferring a companion criminal case to the Federal District Court for the Northern District of Illinois, Eastern Division.

⁵ The gist of the affidavit supporting the Mack motion was that its principal offices are in New York and that Chicago, being much closer to New York than is Los Angeles, would be, as to Mack, a more convenient place for trying the cause (R. 15-17). The two affidavits filed in support of Firestone's motion allege primarily (1) that since Firestone's principal place of business is Akron, Ohio, trial in Chicago would be much more convenient than in Los Angeles, and (2) that papers subpoenaed from Firestone involving its relationship with National disclosed the names of 16 members of the Firestone organization, that the Government or Firestone might call a substantial number of these executives as witnesses, and that all but one of them are residents of Akron or Chicago (R. 117-119).

The affidavits of City Lines aver:⁶

As to practically all of National's 100% subsidiaries, with the exception of Pacific's subsidiaries, their purchases of supplies have been arranged in Chicago, their other operations have been supervised in Chicago, and their books of account have been kept there. All contracts with National or American under which the supplier appellees invested in securities of these companies or under which the operating companies purchased some of their requirements of busses, tires, tubes, and petroleum products from the supplier appellees, were negotiated and agreed upon "principally" in Chicago. (R. 25-26.)

Pacific was organized in May 1938 at the instance of National, Standard, General Motors, and one non-defendant company. In December 1940 National sold its stock interest in Pacific and from then until July 1946 most of Pacific's stock was owned by certain of the supplier appellees. In July 1946, pursuant to an earlier agreement, stock of National was exchanged for all outstanding stock of Pacific. Until April 1940 Pacific's main office was in Chicago. Since then its main office has been in Oakland, California, and it has been managed and operated from that city. Its "general policies" are at present directed from Chicago. (R. 26-27.)

The trial will probably take "a number of weeks." It is likely that the number of witnesses will be at least 100. Many "essential" witnesses will come from various parts of the country, but "largely" from the Chicago area. Six executive officers of National, who reside in or about the

⁶ These affidavits are: one by the president of National (R. 23), one by its counsel of record in the present case (R. 74), and two by a member of the New York law firm which is National's general counsel (R. 120, 123). The second of the foregoing affidavits incorporated by reference (R. 76) three affidavits which had been filed in the companion criminal case against appellees (R. 166, 175, 180).

Chicago area, and a number of "key" employees on its accounting staff, will have to attend throughout the trial. (R. 28-29.)

Trial of the criminal proceeding in Chicago and trial of the civil action in Los Angeles would require defense of the same cause of action in widely separated forums and the retention by each corporate defendant of local counsel in both places, with consequent unnecessary expenditure of time and money (R. 121-122).

An opposing affidavit filed in behalf of the United States by one of the counsel who had participated in the investigation resulting in the filing of the present suit (R. 112), avers:

All supplier appellees except Mack and Phillips are found and transact business on a large scale in the southern district of California and Mack does business in that district through a wholly-owned subsidiary. W. Ralph Fitzgerald, vice president and operating manager of National and one of the two officers of National in charge of the purchase of busses, tires, tubes, and petroleum products for its operating subsidiaries, lives in Los Angeles and supervises National's operations on the Pacific Coast. (R. 113.)

The evidence which the Government expects to introduce to prove the allegations of the complaint will cover the manner and method whereby National secured control of Pacific, the Los Angeles Transit Lines, the Long Beach City Lines, and the Key System which operates in the Oakland and San Francisco Bay Area in California, as well as the relations between such companies and the supplier appellees other than Phillips. The Government expects to call a substantial number of witnesses from the Pacific Coast Area and the documentary evidence which it will subpoena from companies doing business in that area will form a substantial part of the proof which the Government expects to offer. The Government also expects to subpoena numerous documents from operating subsidiaries of National located on

the Pacific Coast, and from Pacific, Standard, and Federal, which appellees have their principal offices in the State of California. (R. 112-113.)

There are two groups of subsidiaries controlled by National, those primarily directed from Chicago and those primarily directed by local management. The assets of the former total about \$29,500,000. This amount is less than the combined assets of the Key System and the Los Angeles Transit Lines, both of which are controlled by National, operate in California, and have been subjected to the restraints charged in the complaint respecting their purchases of busses, tires, tubes, and petroleum products. The sale of products subject to such restraints is far greater on the Pacific Coast than in any other area of the country. During the first eight months of 1946 purchases of motorbusses by the so-called "Chicago operated companies" totaled only \$769,681, whereas during the same period the Los Angeles Transit Lines' purchases of motorbusses totaled \$2,232,975. (R. 114-115.)

The reply affidavits of City Lines do not controvert any of the foregoing averments made by Government counsel although the reply affidavits represent that some of these averments are irrelevant to the question of *forum non conveniens* (R. 123-132). Likewise uncontroverted is the averment made in the companion criminal case,⁷ that a majority of the witnesses who testified before the grand jury which returned the criminal indictment resided in or were from the Pacific Coast area (R. 176).

On the day before the complaint in the instant case was filed, a grand jury for the Southern District of California returned an indictment against the nine present appellees and seven of their officers making the same charges of viola-

⁷ This affidavit is part of the record upon which the district court acted in the present case (R. 76).

tion of the Sherman Act as are made in the civil complaint (R. 76-90). In the indictment, however, the following additional facts are set forth (R. 84-85, 89-90):

American, about January 10, 1945, acquired a controlling interest in the Los Angeles Railway Corporation (now known as the Los Angeles Transit Lines) of the city of Los Angeles, California. This purchase was made pursuant to an oral understanding with Federal that \$1,074,064, which Federal paid to American, should be used with other funds in acquiring such control, and that Federal should receive certain shares of American's preferred and common stock. Subsequently, pursuant to the same understanding with Federal, the Los Angeles Transit Lines entered into a contract providing that it would, during the next ten years, buy 50% of its requirements of petroleum products from Standard, Federal's parent, and would terminate as rapidly as possible all existing contracts for the purchase of such products from others. On May 1, 1946, this contract was amended to provide that Los Angeles Transit Lines would, during the next ten years, buy all of its requirements of petroleum products from Standard.

In the criminal case the court below filed an opinion on August 14, 1947, holding that the defendants' motion to transfer the proceeding to the Federal District Court for the Northern District of Illinois, Eastern Division, should be granted (R. 91-102).^{*} The court stated that while it did not question the Government's motive in instituting the prosecution in the Southern District of California, it was

^{*} Defendants' motion was made under Rule 21(b) of the Federal Rules of Criminal Procedure. This Rule reads:

"The court upon motion of the defendant shall transfer the proceeding as to him to another district or division, if it appears from the indictment or information or from a bill of particulars that the offense was committed in more than one district or division and if the court is satisfied that in the interest of justice the proceeding should be transferred to another district or division in which the commission of the offense is charged."

satisfied that a trial there "would impose unnecessary hardships on the defendants and entail unjustifiable expense which it is the object of the new rules of criminal procedure, and especially of the rule under discussion, to avoid" (R. 102).

In the civil case the court filed an opinion on September 29, 1947, holding that the complaint should be dismissed upon the ground of *forum non conveniens* (R. 134-145). The court recognized that the Clayton Act, in the venue provisions of Section 12, is a special venue statute (R. 139). But the court concluded that there was scope for application of the doctrine of *forum non conveniens* under both general and special venue statutes unless, in the case of a special venue statute, its legislative history showed an intent to confer upon the plaintiff an absolute right to the venue of his own selection (R. 139-142). The court was not satisfied that Congress had manifested such purpose as to Section 12 of the Clayton Act and the court, believing that it was thus free to apply the doctrine of *forum non conveniens*, decided that the facts called for dismissal of the complaint on this ground (R. 142-145). The court later filed findings of fact and conclusions of law (R. 151-162) and entered a judgment dismissing the complaint (R. 162-163).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

1. In holding that it has discretion to entertain a motion based upon *forum non conveniens* to dismiss an equity suit brought by the United States under Sections 1 and 2 of the Sherman Act.
2. In holding that the Southern District of California is an inappropriate forum in which to maintain the present suit.

3. In holding that the interests of justice require that this suit be dismissed, without prejudice to the plaintiff commencing a similar suit against the appellees in another forum.

4. In dismissing the plaintiff's complaint.

SUMMARY OF ARGUMENT

I

A. The courts have designed the doctrine of *forum non conveniens* as an "instrument of justice." No single factor or combination of factors requires, as a rule of law, dismissal of a suit upon this ground. Its meaning is no more definite than that, where trial in the forum chosen by the plaintiff does not serve "the ends of justice," a court may resist such "imposition upon its jurisdiction" and dismiss the proceeding. It is a doctrine to be applied only in exceptional circumstances and the plaintiff's choice of forum should rarely be disturbed "unless the balance is strongly in favor of the defendant."

B. When the special venue provisions of Section 12 of the Clayton Act are read in the light of their statutory setting and all other relevant considerations, the maximum scope which it is reasonable to suppose that Congress intended them to have is that a venue which they authorize may not be defeated upon any ground short of a clear showing that the plaintiff had no reasonable basis for the forum of its selection and that suit therein will place upon the defendants and the court of the forum such unnecessary heavy burdens as to frustrate the ends of justice. Numerous statutory provisions manifest the Congressional purpose that civil suits to prevent violations of antitrust laws shall proceed to final determination with the greatest possible dispatch. Full freedom to challenge the appropriate-

ness of the forum would be productive of serious delay, contrary to the purpose of Congress. The multistate character of both the restraints against which the statute is directed and the business of the corporate defendants in such proceedings, and the absence of any clearly defined locus of the alleged illegal conspiracy or combination, make the question whether any particular forum is "convenient" exceedingly complex and enable defendants to call into question, with a show of plausibility, almost any forum which the plaintiff may select. If the Government must at its peril satisfy the court that it has chosen the most appropriate of all available forums, the very latitude as to venue authorized by the statute will operate to entrap the plaintiff.

C. There is solid rational basis for the Government's choice of the southern district of California as the forum for suit; and the court below did not question the Government's good faith in selecting that forum. Not only have appellees entered that district to impose restraints therein on a large scale but they have imposed these restraints through a subsidiary of National located in that district. The restraints have also been imposed as to a greater volume of commerce in the Pacific Coast area than in any other area of the country. In addition, one of the two officers of National most closely concerned with these restraints resides in the southern district of California.

The grounds upon which appellees assert that this district would be an "inconvenient" place of trial are highly speculative and conjectural, of a kind held not to warrant application of the doctrine of *forum non conveniens*. Nor does the relief which the Government has prayed call for detailed and continuous supervision over a corporation domiciled elsewhere, such as would warrant a court in declining jurisdiction in order that the matter might be handled by a court "nearer home."

II

The Clayton Act, in Section 12, is concededly a special venue statute. This Court appears to have held that, while there is room for application of the doctrine of *forum non conveniens* in cases arising under general venue statutes, the doctrine is not applicable to cases under special venue statutes. *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, 505-506. We submit that there are sound grounds for such a distinction. The very authorization of a particular venue for enforcement of rights created by Congress indicates that such authorization was designed to effectuate the policy of the statute of which the venue provisions are a part and that the courts are therefore not at liberty to narrow the authorized venue upon the basis of generalized considerations embodied in the phrase *forum non conveniens*.

But irrespective of whether or not the distinction between general and special venue statutes gives rise to a general rule of statutory construction, the considerations previously set forth bearing upon the interpretation to be given to Section 12 of the Clayton Act, as well as the legislative history of that Section, lead to the conclusion that Congress intended that the venue which it authorizes should not be defeated upon the ground of *forum non conveniens*.

ARGUMENT

I

Even on the assumption that the doctrine of "forum non conveniens" is applicable, under some circumstances, to civil suits brought by the United States under the antitrust laws, dismissal of the present suit upon the ground of "forum non conveniens" was a clear misapplication of the doctrine.

A. The General Principles Governing Application of the Doctrine

This Court has recently had occasion to consider and pass upon the doctrine of *forum non conveniens*. A full review

of the cases is therefore not necessary and we shall merely call attention to some of the principles which, under the decisions of this Court, govern application of the doctrine. The question whether there is any room for the doctrine when a suit in a federal court is within authority expressly conferred by a special venue statute of the kind here involved will be left for later discussion (*infra*, pp. 32-39).

The doctrine "was designed as an 'instrument of justice'". *Williams v. Green Bay & Western R. R. Co.*, 326 U. S. 549, 554. This basic principle has been variously phrased. No single factor or combination of factors requires, as a rule of law, dismissal of a suitor from the forum; the doctrine is one which "resists formalization and looks to the realities which make for doing justice." *Koster v. Lumbermens Mutual Casualty Co.*, 330 U. S. 518, 527-528. If a proceeding in the venue of the plaintiff's choice would constitute a "misuse of venue," a proceeding therein is an "imposition upon its jurisdiction" which the court may resist. *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, 507. "In the interest of justice," courts occasionally decline to exercise jurisdiction with which they have been vested when convinced that another forum is the appropriate one (*Canada Malting Co., Ltd. v. Paterson Steamships, Ltd.*, 285 U. S. 413, 423), but the doctrine is to be applied in "rather rare cases" (*Gulf Oil case, supra*, p. 509). The court will weigh, as between plaintiff and defendant, "relative advantages and obstacles to fair trial," but "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed" (*idem*, p. 508). "Factors of public interest also have place in applying the doctrine" (*ibid.*).

A doctrine of such broad and general contour does not permit of precise categorization nor is it, like a statute, the

starting point for determining what cases fall within its terms. Rather, the doctrine represents legal nomenclature adopted by the courts to express the conclusion which they reach in certain situations. "Wisely, it has not been attempted to catalogue the circumstances which will justify or require either grant or denial of [this] remedy" (*Gulf Oil case, supra*, p. 508).⁹

The phrase "forum non conveniens" contains misleading implications.¹⁰ In the context in which used, it connotes, not an "inconvenient" forum in terms of normally understood convenience, but an "inappropriate" forum in terms of propriety. Courts decline to exercise jurisdiction, not on minimal grounds of inconvenience, but only where there are strong and compelling reasons for believing that to retain jurisdiction would not be in the interest of justice. The doctrine is perhaps most frequently applied where it appears to the court that sheer harassment of the defendant has motivated the plaintiff's choice of a forum, where he is thought to be pursuing the strategy of "forcing the trial at a most inconvenient place for an adversary, even at some inconvenience to himself." *Gulf Oil case, supra*, p. 507. See also the *Koster case, supra*, p. 531.

⁹ "To trace in advance the precise line of demarcation between the controversies affecting a foreign corporation in which jurisdiction will be assumed and those in which jurisdiction will be declined, would be a difficult and hazardous venture." Cardozo, J., in *Travis v. Knox Terpezone Co.*, 215 N. Y., 259, 264, quoted in *Williams v. Green Bay & Western R. R. Co.*, *supra*, p. 559.

¹⁰ The phrase is not an ancient one but appears to have been used for the first time in Scottish cases in the latter part of the nineteenth century as a "mere neo-Latin translation of the English phrase [inconvenient forum] already familiar to Scottish judges." Braucher, *The Inconvenient Federal Forum*, 60 Harv. Law Rev. 908, 909.

B. Venue, as Authorized by the Special Venue Statute Governing Civil Suits Brought by the United States under the Antitrust Laws, may be Rejected, if at all, upon the Ground of "*Forum Non Conveniens*" only where the Defendant has made a Clear Showing that there is no Substantial Basis for the Venue Selected and that a Proceeding Therein Would be so Burdensome to the Court and to the Parties as to Frustrate the Ends of Justice

Venue in this proceeding is governed by Section 12 of the Clayton Act, which provides (*supra*, p. 3) that any suit under the antitrust laws against a corporation may be brought not only in the district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business. It is undisputed that, under these statutory provisions, there was venue in the southern district of California. Three corporate defendants, General Motors, Firestone and Standard, were doing business or were found in that district when suit was brought (Eng. 2, R. 152).¹¹

It is likewise undisputed that Section 12 is a special venue statute. The court below said that "concededly" this was so (R. 139). If the matter were otherwise in doubt it is set at rest by *Suttle v. Reich Bros.*, No. 214, this Term, decided March 8, 1948, where this Court referred to both Section 12 of the Clayton Act and the venue provisions of the Federal Employers Liability Act (45 U. S. C. 56) as examples of "special venue statutes" (slip opinion p. 4). See to the same effect, *Eastman Kodak Co. v. Southern Photo Co.*, 273 U. S. 359, 372; *Lumiere v. Wilder, Inc.*, 261 U. S. 174, 177-178.

We later contend (*infra*, pp. 32-39) that Congress intended that the special venue provisions of Section 12 should give

¹¹ Section 5 of the Sherman Act (*supra*, p. 3) authorized the court to summon before it the non-resident defendants. See *United States v. Standard Oil Co.*, 152 Fed. 290 (E. D. Mo.), affirmed 221 U. S. 1, 46.

the plaintiff an absolute choice of venue, just as it has been held that the special venue provisions of the Federal Employers Liability Act give the plaintiff an absolute choice of venue.¹² Our present contention is the narrower one, that in any event Section 12, when read in the light of its statutory setting and all other relevant considerations, does not permit defeat of a venue which it authorizes upon any ground short of a clear showing that the plaintiff's choice of venue was made without substantial reason therefor and that a proceeding therein will impose unnecessary and unwarranted burdens upon the defendants and the court of the forum.

Many statutory provisions make abundantly clear the Congressional purpose to assure prompt and authoritative adjudication of civil proceedings brought by the United States under the antitrust laws. Section 4 of the Sherman Act (*supra*, p. 2) provides that these proceedings shall be heard and determined "as soon as may be," and Section 2 of the Expediting Act (15 U. S. C. Supp. V, 29), gives a direct appeal to this Court from the final decree entered in any such case. Section 1 of the Expediting Act, as amended (15 U. S. C., Supp. V, 28), authorizes the Attorney General to file a certificate that a case of this kind is of general public importance, and provides that the three-judge court which is thereupon to be designated shall assign the case for hearing "at the earliest practicable date" and shall expedite it "in every way". By Section 5 of the Sherman Act (*supra*, p. 3) a non-resident defendant may be brought before the court by serving a subpoena to this end in any district.¹³ And the wide latitude of venue given by Section 12 of the Clayton Act has already been mentioned.

¹² *Baltimore & Ohio R. R. Co. v. Kepner*, 314 U. S. 44; *Miles v. Illinois Central R. R. Co.*, 315 U. S. 698.

¹³ See also the like provisions of Section 15 of the Clayton Act, 15 U. S. C. 25.

The concurring opinion in *Miles v. Illinois Central R. R. Co.*, 315 U. S. 698, 708, observes that it was unlikely that Congress intended that the venue provisions of the Federal Employers Liability Act should leave the plaintiff in a position where the defendant "could force him to try one lawsuit at home to find out whether he would be allowed to try his principal lawsuit elsewhere." Since Congress has declared, in effect, that expeditious determination of suits by the Government to enforce the antitrust laws is of public concern, we submit that it is unreasonable to suppose that Congress intended that the defendant in such a suit should be free to require the Government, prior to any trial on the merits, to convince the court, upon the basis of opposing affidavits and arguments, that, in view of the proof to be adduced, the issues to be tried, and the relief being sought, the venue of suit is not a "convenient" forum. To leave open the door to such trial of this issue would be productive of countless delays, including probable appeal to this Court when the ruling is adverse to the Government on this preliminary issue.

In a suit by the United States to enforce the antitrust laws, the complexity of the factors pertinent to the issue of *forum non conveniens* argues against recognition of this doctrine or against giving it recognition other than within extremely narrow limits. In such suits the principal defendants are, in practically all cases, corporations doing a multi-state business. The combination or conspiracy which is the basis of suit rarely has a defined locus. It is rarely embodied in a single written instrument and the proof of its existence is drawn from a course of dealing or from communications, memoranda, verbal agreements or written contracts involving various parties and made or entered into at various times. The restraints which the unlawful combination imposes usually have their chief mani-

festation and incidence outside the districts in which the principal offices of the defendant corporations are located.

In these circumstances, the usual signposts to which the courts look in considering the question of *forum non conveniens* practically never point unerringly to a particular forum. It is an inherent characteristic of cases of this kind, charging a group of corporations with conspiring illegally, that, whatever the forum selected by the plaintiff, it will be inconvenient for some defendants and, frequently, for most of them. In the instant case, for example, only two appellees, National and American, have their principal places of business in Chicago,¹⁴ whereas three appellees, Pacific, Standard, and Federal, have their principal places of business in California.

The well-known aspects of antitrust litigation to which we have referred are persuasive that Congress intended that the venue which it established for civil suits brought under the antitrust laws may not be defeated upon the ground of *forum non conveniens* or that Congress at least intended that the scope of this doctrine, as applied to such suits, should be severely circumscribed. And even if the intention of Congress is laid to one side, it remains true that when there is such diffusion of possible venue and when no particular venue is clearly indicated by the signposts which the courts follow in applying the rule of *forum non conveniens*, the foundation for dismissal of a suit under the rule or doctrine is lacking.

This Court has held that Congress intended that the venue provisions of the Federal Employers Liability Act should give to the plaintiff a choice of forum which is absolute (*infra*, p. 32). But in such cases the legal issue

¹⁴ Since it appears that American was merged with National in July 1946 (R. 30-32), there now is only one of the corporations against which the complaint was filed having its main office in Chicago.

ordinarily is comparatively simple and such matters as the place of accident, the witnesses to be called, and the residence of the plaintiff are clearly defined. There would seem to be even stronger reasons for concluding that Congress intended that the venue provisions of the Clayton Act should give the plaintiff a choice which the courts must respect.

The instant case illustrates the extreme hazards attendant upon applying the doctrine of *forum non conveniens* to an antitrust proceeding of the present kind. The court below, in holding that the doctrine called for dismissal of the complaint, undertook to forecast the length of the trial, the principal issues which it would present, the location and character of the proof (documentary and testimonial) likely to be offered, and the tasks which would be cast upon court if the full relief prayed by the Government should be granted.¹⁵ An attempt to make any such forecast not only consumes an inordinate amount of time but necessarily is highly speculative. In the present case we believe that the court below failed to appraise the situation correctly in many important respects. See *infra*, pp. 26-30.

From the fact that Congress granted the Government a choice of venue, it follows as a minimum that any exercise of that choice must be respected unless the court is able to conclude that the Government clearly abused the discretion in selection of venue given it by statute. Certainly a court is not free to pursue the simple inquiry, as did the court below, whether the forum chosen is, in the court's judgment, the most convenient of all available forums. So to hold would mean that the very latitude of choice of venue provided by the Clayton Act would serve to entrap

¹⁵ Record 143-144. See also the "analysis" of the "facts" which the court made in the companion criminal case (R. 98-101), which analysis it adopted by reference in the instant case (R. 143).

the plaintiff. It would mean that, of the large number of possible forums, the Government must at its peril select the one which, in the judgment of the court in which suit is filed, is the most convenient of all possible forums or face a lawsuit on this issue prior to any hearing on the merits of its charges. If a court regards itself as *forum non conveniens*, it will dismiss the suit and the Government will have to commence its suit elsewhere, usually without any assurance that the process will not be repeated *ad infinitum*.¹⁶

This Court has said that factors of "public interest" have a place in applying the doctrine *forum non conveniens*, stating: "Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin." *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, 508. Avoidance or mitigation of precisely such administrative difficulties has a part in selection by the Government of the venue in which to bring an antitrust proceeding. A majority of the larger corporations undoubtedly now have their principal offices in New York, and Chicago would come next in this respect. If the location of the principal offices of the defendant corporations were to be the principal criterion in determining the "convenient" forum for trial, the burden of trying antitrust suits brought by the United States, which frequently involve numerous preliminary motions and comparatively long trials, will be cast upon the federal courts of the southern district

¹⁶ We do not claim that this might be a consequence of dismissal of the complaint in the instant case. Counsel for appellees filed with the court below a letter stating that if their motion to dismiss is granted and if the Government files a new suit based on the same charges in the district court for the Northern District of Illinois, Eastern Division, they will not move for dismissal of that action upon the ground of *forum non conveniens* (R. 132-133).

of New York and the northern district of Illinois to an even greater degree than at present.¹⁷

C. In This Case There Was Substantial Basis for the Venue Selected and a Proceeding Therein Will Not Impose Any Unwarranted Burden upon the Defendants or upon the Court of the Forum

We submit that there unquestionably is solid rational basis for the Government's decision to have trial of the present cause in the southern district of California. Two important subsidiaries of National, the Long Beach City Lines and the Los Angeles Transit Lines, are located in the district (*supra*, p. 9). And National's acquisition of control of the latter transit system strikingly exemplifies the restraints which the complaint charges. To purchase its securities, National (or its subsidiary American) paid \$12,880,000 (R. 115). Standard, which transacts business in the southern district of California, furnished (through its subsidiary Federal) over \$1,000,000 of the funds used by American for this purchase and, as a part of the agreement between the parties, a contract was entered into giving Standard the exclusive right for a period of ten years, to supply all petroleum products required by Los Angeles Transit Lines (*supra*, p. 11).

The history of Pacific and of its relations with other appellees is an important part of the evidence which the

¹⁷ The Annual Report of the Director of the Administrative Office of the United States Courts—1947, states: "Undoubtedly the most serious condition of accumulating arrears in the Federal judicial system, and one that shows little prospect of improvement under present conditions is that in the Southern District of New York." (*September 1947 Report of the Judicial Conference*, p. 89). See also *idem*, pp. 33, 36.

It is also there stated that of 73 civil antitrust suits brought by the United States pending in the district courts as of August 8, 1947, 24, or 33%, were in the Southern District of New York and eight, or over 10%, were in the Northern District of Illinois (*idem*, pp. 71-73).

Government expects to introduce in support of the charges of its complaint (R. 112). Such evidence concerns matters relating almost exclusively to the Pacific Coast area. Pacific operates and manages local transportation systems located in the States of California, Washington, and Utah (R. 2). Since early in 1940 Pacific's main office has been in California, where its business is managed and its contracts with appellees' suppliers have been executed (R. 26-27). Appellees General Motors, Firestone, and Standard (through Federal), which do business or are found in the southern district of California (R. 152), has each owned a stock interest in Pacific at various times between 1938, when Pacific was organized, until August 1946, when all of its outstanding stock was exchanged for stock of National (R. 2, 26).

One of the five brothers who organized National and who have at all times owned the largest block of its common stock resides in Los Angeles (R. 25, 113). This individual is vice president and operating manager of National, is one of its two officers in charge of purchase of busses, tires, tubes, and petroleum products for its operating subsidiaries, and supervises its operations on the Pacific Coast (R. 113).

It is undisputed that the restraints charged in the complaint were imposed in the southern district of California. In one major item of commerce subjected to these restraints, busses purchased by National's operating subsidiaries, the purchases by a subsidiary located in the southern district of California were, during the first eight months of 1946, almost three times the purchases made during the same period by subsidiaries operated from National's main office in Chicago (*supra*, p. 10). The total commerce subjected to the restraints charged in the complaint is far greater on the Pacific Coast than in any other area of the country in which National's subsidiaries conduct operations

(R. 115). The fact that a majority of the witnesses who testified before the grand jury which returned the indictment in the companion criminal case were from the Pacific Coast area (R. 176) likewise has an important bearing upon the reasonableness of the Government's choice of the southern district of California as the venue in which to file suit. And the court below said that it did not question the motive of the government in instituting suit in this district (*supra*, p. 11).

The district court found that the Antitrust Division of the Department of Justice had an office in Chicago and that "no substantial hardship" will be borne by the Government if trial is held in Chicago (Fng. 10, R. 159). The court made no finding, nor had it any basis for making a finding, as to the availability of judges in the Northern District of Illinois, Eastern Division (Chicago), for hearing this case or the transferred criminal case. Nor did the court find, although it was clearly a matter of which it might have taken judicial notice, that the grand jury proceedings which eventuated in the criminal indictment returned against appellées, were conducted by members of the staff of the Antitrust Division in Los Angeles, including the chief of all of its Pacific Coast offices. To try either of these cases by counsel other than those already familiar with the evidence and the legal issues likely to arise at the trial would obviously be a substantial hardship to the Government, as it would be to draw these counsel away from the limited staff maintained at Los Angeles in order to try the case, and to handle proceedings preliminary to trial, before a judge in a distant district.

We now consider the question of the "inconvenient" forum from the standpoint of appellees. It is clear that, apart from National, none of them has made any serious showing in support of trial of the cause in Chicago rather

than Los Angeles (*supra*, p. 7). As to National, we note that it controls companies doing business in 16 States, of which companies some of the most important are in the Pacific Coast area. Not only is it exercising control over far flung operations ranging from the Atlantic Seaboard to the Pacific and from the South and Southwest to the Northwest. (R. 3-4), but the corporations which it controls are of substantial size (*supra*, p. 10). We submit that "the plea of inconvenience loses some of its persuasiveness in the mouth of" a defendant controlling interests of this kind, "particularly one charged with personal wrongdoing."¹⁸ See Braucher, *The Inconvenient Federal Forum*, 60 Harv. L. Rev. 908, 933.

The averments which are of greatest substance in the present connection are that six of National's chief executive officers would have to attend during the trial and that, according to the advice of counsel, the trial will probably take "a number of weeks" (R. 28-29). How inherently speculative is the averment as to probable length of trial is shown by the fact that the affidavit filed in support of National's motion to transfer the criminal case averred that, according to the advice of counsel, trial will probably take "several months" (R. 172).¹⁹ By interrogatories and requests for admissions, as provided by Rules 33 and 36 of the Federal Rules of Civil Procedure, documentary or other undisputed facts can be established without the calling

¹⁸ It is pertinent to note that the consolidated assets of the supplier appellees on December 31, 1946, as reported in Moody's 1947 *Industrial Manual*, are: General Motors, \$1,982,000,000 (p. 1635); Standard, \$785,000,000 (p. 1865); Phillips, \$317,000,000 (p. 2831); Firestone, \$288,000,000 (p. 577); Mack, \$62,000,000 (p. 1798).

¹⁹ The findings of fact which the court filed in the present case adopt large portions of its opinion in the criminal case. It is a matter of some significance that the second paragraph of Finding 6 (R. 156-157), which is taken from the opinion in the criminal case (R. 98-99), states that the trial "would require the attendance over a period of months" of some of National's "keymen" (R. 156).

of witnesses, and trial thereby appreciably shortened.²⁰ Furthermore, if appellees wish to avoid calling witnesses from a distance, their testimony can be taken by deposition and the depositions can be introduced in evidence (Rule 26(a), (d) (3)).

The affidavit of National's president avers (R. 29) that the number of witnesses is likely to be at least 100 and that many essential witnesses will come from various parts of the country, but largely from the Chicago area. The observation made by this Court in the *Gulf Oil* case, *supra*, at p. 511, is pertinent, that "litigants generally manage to try their cases with fewer witnesses than they predict in such motions as this." In *International Milling Co. v. Columbia Co.*, 292 U. S. 511, 521, this Court said, "The forum being in other respects appropriate, jurisdiction is not lost because . . . the chief witnesses on the trial reside in other states, most of them, it seems, in Chicago, Illinois." This Court then quoted with approval the following from *Denver & R. G. W. R. R. Co. v. Terte*, 284 U. S. 284, 287:

As a practical matter, courts could not undertake to ascertain in advance of trial the number and importance of probable witnesses within and without the State and retain or refuse jurisdiction according to the relative inconvenience of the parties.

If we turn to the question of "convenient" forum from the standpoint of the court itself, we find that a case of this kind does not involve application of the law of some other jurisdiction, with which the federal court of some other dis-

²⁰ In *United States v. Columbia Steel Co.*, No. 461, this Term, where the Government utilized such procedure, the trial, notwithstanding the importance of the issues involved, lasted only five days.

See also *Associated Press v. United States*, 326 U. S. 1, where such procedure, supplemented by affidavits and admissions made in defendants' answers, furnished sufficient basis for entry of judgment against the defendants on the Government's motion for summary judgment.

trict might be more familiar. But the court below concluded that the relief sought by the Government would require control of National, over a long period of time, by a court far removed from its domicile (R. 144). Our answer is that even if the full extent of the Government's prayer for relief should be granted; the relief would not be "so extensive or call for such detailed and continuing supervision that the matter could be more efficiently handled nearer home" (*Williams v. Green Bay & Western R. R. Co.*, 326 U. S. 549, 555-556) and that the case presents "no problem of administration of the affairs of a foreign corporation of the sort which would lead a court to decline jurisdiction" (*Koster v. Lumbermens Mutual Casualty Co.*, 330 U. S. 518, 527).

In its opinion the court below quoted in full, "because of their significance" to the issue before it, paragraphs 5 and 6 of the prayer for relief set forth in the complaint (R. 137). We fail to see any present significance in paragraph 6, which requested the relief customarily granted in a case of this kind when violation of the statute has been found, that the defendants be enjoined from conspiring to monopolize or restrain interstate commerce in the manner described in the complaint, and from engaging in agreements, understandings, or practices having a tendency to revive or continue any of the violations of the statute charged in the complaint.

Paragraph 5 prays that National, American and Pacific be ordered to make such disposition of their interests in local transportation companies "as is necessary to restore competition and to dissipate the effects of the unlawful conspiracy" and that they be enjoined from acquiring any financial interest in any such company without first obtaining the approval of the court. The first part of this prayer may be as easily and as effectively ordered by a court sitting

in Los Angeles as by a court sitting in Chicago. As to the latter part of the prayer, if we assume that it will be granted, which is speculative, the issue presented by any requested approval will not involve any matter within the peculiar competence of a court sitting in Chicago, as distinguished from one sitting in Los Angeles.

Possibly appellees will urge that paragraph 4 of the prayer for relief (R. 9) would, if granted, require control of National for a long period of time. The prayer is that National, American and Pacific and their operating companies be enjoined from purchasing busses, tires, tubes and petroleum products, without first advertising for competitive bids for such supplies pursuant to a plan to be incorporated into and made a part of any final order entered by the court. But upon the entry of such an injunction, the court's function comes to an end, apart from punishment of violations, should they occur. The Government, if it believed that this provision of the decree, or any other provision, had been violated, would bring appropriate contempt proceedings and submit evidence to support its charges to the court which had issued the decree. The power to punish violations of a decree is not an exercise of continuing administrative control over the defendants against whom the decree runs.

There remains the question whether the transfer of the criminal case to Chicago constitutes a reason for dismissing the present case upon the ground of *forum non conveniens*. The district court's opinion does not state that such transfer was one of the reasons for its holding in the civil case, but it made elaborate findings to the effect that trial of the criminal case in Chicago and trial of the civil case in Los Angeles would cause appellees "great hardship and inconvenience" (Fng. 12, R. 160-161).

The Government had no right of appeal from the order of transfer entered in the criminal case. If dismissal of the civil complaint would be unjustified but for the transfer of the criminal case (which we believe was erroneous), such transfer does not supply justification which otherwise was wanting—two wrongs do not make a right. Appellees cannot rely upon such special or additional inconvenience as results from being under the necessity of defending the criminal case in one district and the civil case in another, since this is an inconvenience which they brought upon themselves when they moved to have the criminal case transferred to another district. Any other view would mean that the Federal Rules of Criminal Procedure determine civil procedure.

When the Government believes that there has been a violation of the Sherman Act, it sometimes seeks corrective relief by way of a civil suit filed after, or simultaneously with, the return of a criminal indictment, but when companion proceedings are thus instituted it is only rarely that both are ultimately brought to trial. If it is held on the present appeal that dismissal of the civil complaint was erroneous, the Government will not seek to bring the criminal and the civil cases to trial simultaneously and, in any event, it is highly unlikely that it will be found necessary to bring both cases to trial.²¹

²¹ If the Government obtains a decree in a civil suit, the defendants in a related criminal case usually file pleas of *nolo contendere*. If the criminal case is tried first and verdicts of guilty are returned, there is nothing left for trial in the civil case except the question of relief (*Local 167 v. United States*, 291 U. S. 293, 298-299), and the parties are customarily able to reach an agreement on this question and dispose of the civil case by the entry of a consent decree.

II

Both the considerations heretofore set forth and the fact that Section 12 of the Clayton Act is a special venue statute lead to the conclusion that in a civil suit by the United States under the antitrust laws, its choice of a forum cannot be defeated upon the basis of "forum non conveniens"

The Federal Employers Liability Act provides (45 U. S. C. 56) that an action under the Act may be brought in a federal district court in the district of the defendant's residence, or in which the cause of action arose, or in which the defendant was doing business at the time of the accident. *Baltimore & Ohio R. R. Co. v. Kepner*, 314 U. S. 44, held that these provisions gave to the plaintiff a choice of venue which could not be defeated upon the ground of *forum non conveniens* and that, since this was a right conferred by federal law, a state court was without power to enjoin, upon the basis of *forum non conveniens*, a suit under the Act brought in a federal court. The Court pointed out (pp. 49-50) that, under the Act as first passed, the venue of actions under it was left to the general venue statute, which fixed venue in the district of the defendant's residence, and that Congress, believing that such venue was too narrow, adopted the present venue provisions. The Court said (p. 54):

A privilege of venue, granted by the legislative body which created this right of action, cannot be frustrated for reasons of convenience or expense.

Miles v. Illinois Central R. R. Co., 315 U. S. 638, held that suits under the Act brought in a state court also cannot be defeated upon the ground of *forum non conveniens*. This Court therefore reversed the decision of a state court enjoining, upon the ground of *forum non conveniens*, a suit under the Act brought in the courts of another state.

Gulf Oil Corp. v. Gilbert, 330 U. S. 501, was a suit based upon diversity of citizenship. This Court, in holding that the complaint had properly been dismissed upon the ground of *forum non conveniens*, stated (p. 505) that the non-application of the doctrine to suits under the Federal Employers Liability Act was "because the special venue act under which those cases are brought was believed to require it." "Those decisions," the Court said (*ibid.*), "do not purport to modify the doctrine as to other cases governed by the general venue statutes." It further said (p. 506) that the Federal Employers Liability Act "specifically provides where venue may be had" and "increases the number of places where the defendant may be sued" whereas a general venue statute means only that "it is proper for the federal court to take jurisdiction, not that the plaintiff's choice cannot be questioned."

Although the opinion in the *Gulf Oil* case appears to indicate that a distinction is to be drawn between special and general venue statutes, the court below concluded (R. 139-142) that this interpretation could not be accepted in view of the decision in *Koster v. Lumbermens Mutual Casualty Co.*, 330 U. S. 518. This was a derivative stockholder's suit and the statute governing venue (28 U. S. C. 112) provides that suit in such a case may be brought in the federal courts in any district in which suit against the defendant or defendants, other than the corporation whose rights the plaintiff seeks to enforce, might have been brought by such corporation. But this is not a special venue statute within the meaning of the distinction drawn in the *Gulf Oil* case, as the opinion in the *Koster* case makes clear. The Court there said (note 2, pp. 522-523) that the venue statute governing the stockholder's derivative suit "is not concerned with facilitating suit in the district of the stockholder's residence, but assures only that suit can be brought

in any district in which the corporation could have been sued."

We submit that the distinction between general and special venue statutes is not technical and formal, but is rooted in substance. Where Congress has created rights and has specified the jurisdiction and venue for enforcement of these rights, it is to be inferred that Congress has shaped the venue provision to implement attainment of the objectives of the statute of which the special venue provision is a part. It must be presumed, in other words, that Congress authorized a particular venue for the purpose of effectuating the public policy embodied in the statute and did not intend to permit a narrowing of such venue upon the basis of *forum non conveniens*. These considerations are obviously absent when Congress enacts a general venue statute, such as that which applies when federal jurisdiction is founded on diversity of citizenship.

We further submit that, irrespective of whether this Court has drawn or should draw a distinction between special and general venue statutes, Section 12 of the Clayton Act is to be interpreted as giving to the plaintiff an absolute choice of venue. We believe that any other interpretation would be inconsistent with the purpose of Congress that civil suits by the United States under the antitrust laws should be brought to a final determination as rapidly as possible (see *supra*, p. 19). Other considerations pointing in the same direction are that the violation of law which these suits are designed to prevent seldom, if ever, has a defined locus and that the corporate defendants in the proceedings for which Section 12 fixes the venue are in nearly all cases large concerns engaged in multi-state business operations (*supra*, p. 20).

The Sherman Act as first enacted contained no provision fixing the venue of actions under the Act brought by the United States and the venue of such suits, just as the venue

of suits, under the original Employers Liability Act, was left to the general venue statutes.²² However, Section 7 of the Act, which was superseded by Section 4 of the Clayton Act (15 U. S. C. 15), provided that private suits for treble damages might be brought in the district in which the defendant either resided or was found. The bill which eventuated in the Clayton Act, as reported by the House Judiciary Committee, provided (Section 10) that "any suit" under the antitrust laws against a corporation, i.e., a suit by the United States or by a private party, may be brought in any district where the defendant resides or "may be found."²³ The House passed the bill after amending this venue provision so as to give venue also where a defendant corporation "has an agent," and the Senate Judiciary Committee, in reporting the House Bill, substituted for these words the words "transact any business."²⁴ The venue provision as thus reported is that which was finally enacted except that the word "any" in the phrase just quoted was dropped.

In the course of the House debate Representative Floyd stated that the provision of the bill authorizing venue where a corporation is found "has the approval of the Attorney General" and that this provision was designed "to enable him to have greater liberty in bringing these [antitrust] suits."²⁵ Congressman Webb, who was the senior House conferee when the bill went to conference, in explaining the provisions of the bill as agreed upon in conference, said of Section 12 that "we are liberalizing the procedure in the courts in order to give the individual who is damaged the right to get his damages anywhere—anywhere you can

²² Section 51 of the Judicial Code; as it stood at the time the Clayton Act was passed, provided that no civil suit shall be brought in any federal district court against any person in any district other than that of which he is a resident (36 Stat. 1101).

²³ H. Rep. No. 627, 63d Cong., 2d Sess., p. 4.

²⁴ S. Rep. No. 698, 63d Cong., 2d Sess., p. 73.

²⁵ 51 Cong. Rec., pt. 10, 9415.

catch the offender, as is suggested by a friend who is sitting near by." ²⁶

Lower federal courts have held, aside from the decision now under review, that the venue provisions governing suits under the federal antitrust laws confer upon the plaintiff a choice of venue which is absolute. In *Momand v. Paramount Pictures Distributing Co.*, 19 F. Supp. 102 (D. Mass.) the court held that it lacked power to dismiss upon the ground of *forum non conveniens* a triple damage suit brought under the Sherman Act. In *Fifth and Walnut, Inc. v. Loew's, Inc.* (Civil No. 36,736, S. D. N. Y.), decided January 23, 1948, which was a suit under the Sherman Act against corporate defendants, the court held that Section 12 of the Clayton Act gives to the plaintiff a choice of forum which cannot be defeated upon the basis of *forum non conveniens*. The court said that the decision of the court below in the instant case "cannot be accepted," and the court further said: "It appears to be an attempted judicial limitation of a clear and definite special venue act affording plaintiffs a privilege of venue, which should not be denied them." In *United States v. Phillips Screw Co.* (Civil No. 47C147, N. D. Ill.) the court, without opinion but following oral argument, entered an order on October 2, 1947, denying the motions of the corporate defendants to dismiss this antitrust proceeding on the ground of "inconvenient" forum. See also *United States v. Standard Oil Co.*, 7 F. R. D. 338, 339 (S. D. Cal.) where a like motion, which the defendants had not pressed, was denied. ²⁷

²⁶ 51 Cong. Rec., pt. 16, 16274.

²⁷ *Securities & Exchange Comm. v. Wimer* (Civil Action No. 6774 W. D. Pa.), decided January 21, 1948, was a proceeding to enjoin certain alleged violations of the Securities Act of 1933, for which venue was fixed by Section 20(b) or 22(a) of the Act (15 U. S. C. 77t (b), 77v (a)). The court held that the privilege of venue conferred by these special venue provisions of the Act was absolute and that the court therefore did not have discretionary power to dismiss the action on the ground of *forum non conveniens*.

Between October 15, 1914, when the Clayton Act became law, and January 15, 1947, the United States instituted 319 civil suits under the Sherman Act or (in a few instances) under the Clayton Act.²⁸ Prior to 1947 no defendant in any of these proceedings has, as far as we are aware, sought dismissal of the complaint by reason of *forum non conveniens*. We submit that the conclusion to be drawn is that the numerous counsel who have represented the defendants in these cases have interpreted Section 12 of the Clayton Act as giving to the plaintiff a choice of venue not defeasible under this doctrine.

The court below said that the provisions of Section 5 of the Sherman Act indicate that Congress did not intend that Section 12 of the Clayton Act should "deprive the courts of their right to forbid resort to an inappropriate forum" (R. 142). The court noted that Section 5 provides that whenever it shall appear to a court before which a proceeding under Section 4 of the Act is pending, "that the ends of justice require" that non-resident parties be brought before the court, the court may cause them to be summoned by means of subpoenas served upon them in any district. The court believed that the words of Section 5 quoted above show that Congress did not intend to give to the Government "complete mastery over the situation."

The interpretation which the court below gave to Section 5 is directly contrary to that given it in *United States v. Standard Oil Co.*, 152 Fed. 290 (E. D. Mo.). That was a proceeding under the Sherman Act against some 70 corporations only one of which was a resident of the district in which suit was filed, while many of the corporate defendants had their principal offices in the East, particularly in and around New York. After the court had entered an order

²⁸ Count of civil cases reported in *The Federal Antitrust Laws* (C. C. H. 1947).

to bring in the non-resident defendants and to serve subpoenas upon them in the districts in which they resided, all non-resident defendants joined in a motion to vacate this order and to quash the service of subpoenas upon them. The court, in denying this motion, said (p. 296) that the question whether the ends of justice would be more completely served by prosecution of the suit in some other district "is not open to the consideration or adjudication of this court." The court said further (*ibid.*):

The Congress did not confer jurisdiction, in this class of cases, upon the Circuit Court in whose district the largest number of conspirators resided, but upon every Circuit Court in whose district a resident conspirator could be found and served with process. It did not grant to any of the Circuit Courts the power to select the court in which the United States should institute its suit. If it had done so, each court might have selected another. It left the complainant free to commence its suit in any Circuit Court in which it could find and serve a resident conspirator. . . .

The exercise of the power conferred upon the courts by the Constitution and the acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of their process, is not discretionary with the courts, when a complainant demands it. It is an imperative duty, which may not be renounced, and whose discharge may not be evaded.

This Court, on appeal to it following adjudication of the case on the merits, said (*Standard Oil Co. v. United States*, 221 U. S. 1, 46):

We are of opinion that in consequence of the presence within the district of the Waters-Pierce Oil Company, the court, under the authority of §5 of the Anti-trust Act, rightly took jurisdiction over the cause and properly ordered notice to be served upon the non-resident defendants.

Possibly appellees will urge that it is anomalous if the court lacks power to dismiss a proceeding of the present kind upon the ground of *forum non conveniens*, when Rule 21(b) of the Federal Rules of Criminal Procedure empowers district courts to transfer criminal cases, including those under the Sherman Act, to another district if the court is satisfied that such transfer is "in the interest of justice." But the suggested anomaly is apparent rather than real. Under our legal system the rights of those accused of crime have traditionally been zealously safeguarded. It is not necessarily appropriate to accord to corporate defendants in corrective civil antitrust proceedings all the procedural safeguards granted to defendants in punitive criminal cases. Finally a rule of criminal procedure adopted more than twenty years later is not a guide to the intent of Congress when it enacted the special venue provisions of the Clayton Act.

CONCLUSION

It is respectfully submitted that the judgment of the district court should be reversed.

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JOHN F. SONNETT,
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Special Assistants to the Attorney General.

April 1948.

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U.S. Supreme Court, D. C.

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Supreme Court of the United States

OCTOBER TERM, 1947

No. 544.

THE UNITED STATES OF AMERICA,

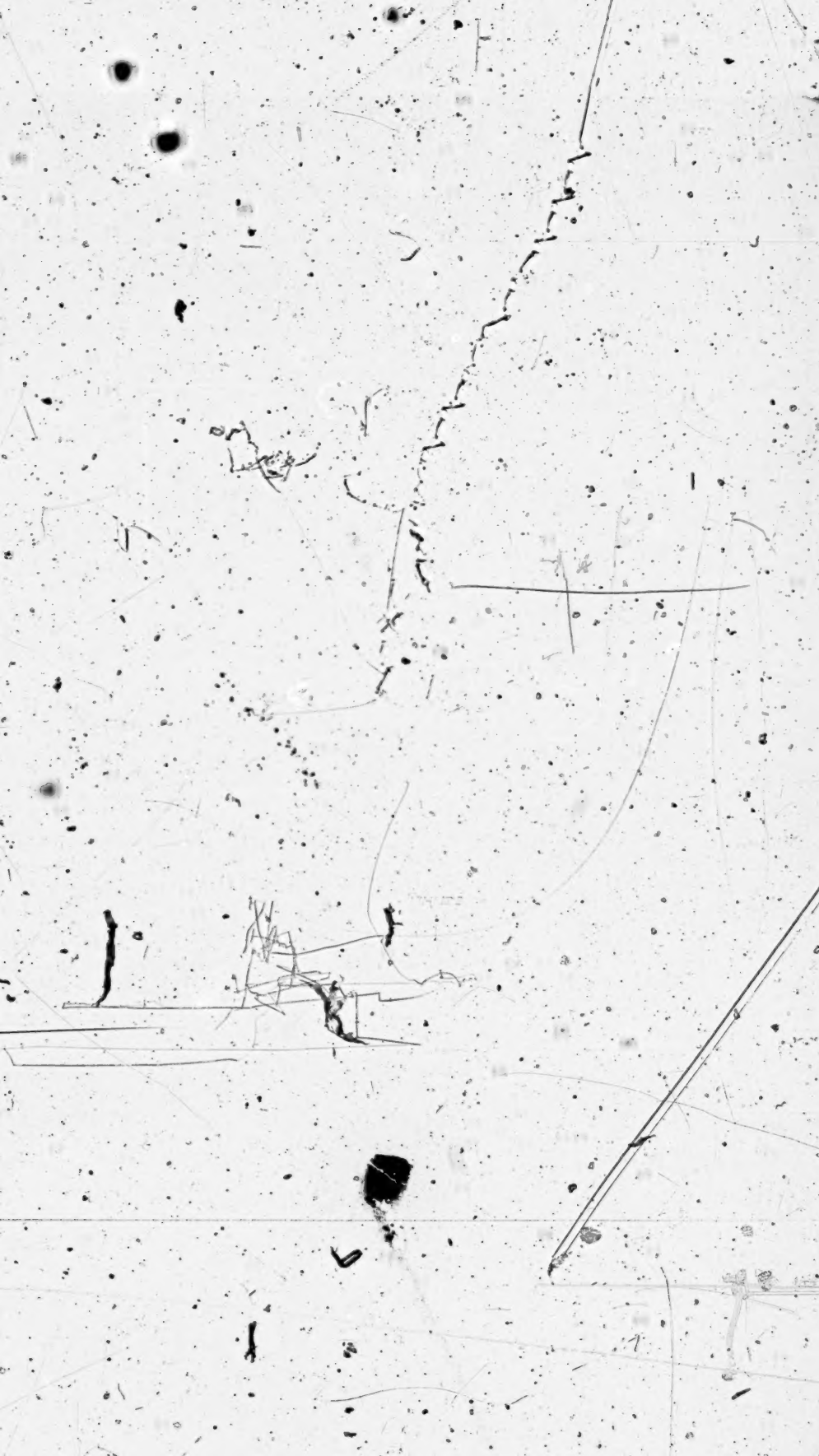
Appellant,

vs.

NATIONAL CITY LINES, INC.,
AMERICAN CITY LINES, INC.,
PACIFIC CITY LINES, INC., *et al.*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF OF NATIONAL CITY LINES, INC., APPELLEE,
AND ALL OTHER APPELLEES.



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Supreme Court of the United States

OCTOBER TERM, 1947

No. 544.

THE UNITED STATES OF AMERICA,

Appellant,

VS.

NATIONAL CITY LINES, INC.,

AMERICAN CITY LINES, INC.,

PACIFIC CITY LINES, INC., *et al.*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF OF NATIONAL CITY LINES, INC., APPELLEE, AND ALL OTHER APPELLEES.

Opinions Below.

The opinion of the district court (R. 134) is reported in 7 F. R. D. 456. The opinion of the district court in the companion criminal proceeding against appellees (R. 91) is reported in 7 F. R. D. 393.

Jurisdiction.

The decree of the district court was entered on October 15, 1947 (R. 162). Petition for appeal was filed and allowed on December 3, 1947 (R. 190). The jurisdiction of this

Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823, 36 Stat. 1167, 58 Stat. 272; 15 U. S. C. 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938; 28 U. S. C. 345). Probable jurisdiction was noted on February 9, 1948 (R. 195).

Questions Presented.

1. Whether the district court, particularly in view of the prior transfer of the companion criminal proceeding to Chicago, abused its discretion in declining jurisdiction of this suit which attacks certain relationships between National, the central defendant whose "business situs" is Chicago, and certain supplier defendants, on the ground that trial in California would be vexatious and oppressive.

2. Whether there was scope for the application of the doctrine of *forum non conveniens* in view of all of the venue provisions of the anti-trust laws, including Section 5 of the Sherman Act and Rule 21(b) of the Federal Rules of Criminal Procedure, and in view of the prior transfer of the criminal proceeding "in the interest of justice".

Statutes and Federal Rule of Criminal Procedure Involved.

The pertinent provisions of Sections 4 and 5 of the Act of July, 1890, 26 Stat. 209, as amended (15 U. S. C. 4 and 5) commonly known as the Sherman Act, are as follows:

SEC. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Section 12 of the Act of October 15, 1914, 38 Stat. 736, 15 U. S. C. 22, known as the Clayton Act, provides as follows:

Any suit, action, or proceeding under the anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Rule 21(b) of the Federal Rules of Criminal Procedure¹ provides as follows:

"The court upon motion of the defendant shall transfer the proceeding as to him to another district or division, if it appears from the indictment or information or from a bill of particulars that the offense was committed in more than one district or division and if the court is satisfied that in the interest of justice the proceeding should be transferred to another district or division in which the commission of the offense is charged."

Statement.

On April 9, 1947 a criminal indictment was returned in the District Court for the Southern District of California against National and the eight other corporate defendants named in this equity suit (together with seven individuals, officers of some of the corporate defendants)² (R. 76).

(1) Act of Congress, June 29, 1940 (Public Law No. 675, 76th Cong.) provided that the Supreme Court should undertake the preparation of rules of pleading, practise, and procedure with respect to proceedings in criminal cases in District Courts in the United States. By order of February 3, 1941, 312 U. S. 717, this Court appointed an Advisory Committee of eighteen persons to assist it in this undertaking. The final draft of the rules was submitted to Congress in 1945. Pursuant to order of this Court the rules became effective March 21, 1946.

(2) The appellees, in addition to National City Lines, Inc. (sometimes called National), are American City Lines, Inc. (sometimes called American) which was merged into National in 1946; Pacific City Lines, Inc. (sometimes called Pacific), a subsidiary of National (R. 170); Mack Manufacturing Corporation (sometimes called Mack); Firestone Tire and Rubber Company (sometimes called Firestone); General Motors Corporation (sometimes called General Motors); Phillips Petroleum Company (sometimes called Phillips); Standard Oil Company of California (sometimes called Standard); and Federal Engineering Corporation (sometimes called Federal), an investment subsidiary of Standard. Mack, Firestone,

The complaint in this companion equity suit was filed the next day (R. 1). The transactions complained of and the charges made in the indictment are substantially the same as in the equity complaint.

Of the nine corporate defendants in each proceeding National, the central defendant, was organized in Delaware and has its principal place of business in Chicago, Illinois; American, a Delaware corporation, in Chicago, Illinois; Mack, a Delaware corporation, in New York City, New York; Firestone, an Ohio corporation, in Akron, Ohio; General Motors, a Delaware corporation, in Detroit, Michigan; Phillips, a Delaware corporation, in Bartlesville, Oklahoma; Standard, a Delaware corporation, and Federal, a California corporation, its subsidiary, in San Francisco, California; and Pacific, a Delaware corporation, a subsidiary of National, Oakland, California. None of the defendants do business or are found in the district where the suit was filed except Standard, General Motors and Firestone (R. 152). The court had no jurisdiction of the other six corporate defendants, including National, and they could be brought before the court only under the provisions of Section 5 of the Sherman Act; in this case the Government failed to obtain any order directing this, merely causing service of the Complaint to be made on these six defendants

General Motors, Phillips and Standard are sometimes called the supplier defendants.

A motion was made to quash the process on American on the ground that it had been merged into National in July 1946 (R. 66). In view of the dismissal, this motion was denied without prejudice (R. 163). A similar motion in the criminal case was granted by the District Court in Chicago.

The individuals named as defendants in the indictment are E. Roy Fitzgerald, president and director, and Foster G. Beamsley, vice-president and director, of National; H. C. Grossman, assistant secretary of General Motors; Henry C. Judd, treasurer of Standard; L. R. Jackson, vice-president of Firestone; and B. F. Stradley, secretary-treasurer, and A. M. Hughes, vice-president and director of Phillips.

at their principal place of business, service on National being made in Chicago.

The Complaint (R. 1-10) attacks the relationship which has existed between National and the suppliers since 1937, charging that an unlawful concert of action was formed between them on or about January 1, 1937, under which some of the suppliers agreed to furnish funds to National which was to use these funds in purchasing control of operating companies and that the operating companies would purchase portions of their requirements of supplies from the suppliers. This is alleged to have eliminated competition from other suppliers and to have monopolized commerce in these supplies.

Business of National and Proof at Trial.

The facts which must be adduced at trial and the inconvenience and hardship which would result from a trial in Los Angeles are set forth in two affidavits by E. Roy Fitzgerald, president of National (R. 23, 126); affidavits of Joseph H. Thomas and H. H. Hallinger, general counsel and secretary respectively of Firestone (R. 117, 118); and an affidavit of C. W. Haseltine, secretary-treasurer of Mack (R. 15). The Government does not, in reality, controvert the statements in these affidavits but, instead, enlarges on certain interests of National in some operating companies on the west coast, states that the Government may subpoena numbers of witnesses from the west coast, and states other matters respecting the local situation on the west coast, as a justification of the institution of this suit in Los Angeles (affidavit by Jesse R. O'Malley, R. 112).

The allegations of the Complaint, the matters to be tried, the relief prayed for by the Government, the proof which the defendants must produce to meet the allegations

of the Complaint, and the hardship upon and inconvenience to the defendants if trial is had in Los Angeles are all set forth at length in the lower court's findings of fact (R. 151) and opinion (R. 135). These findings are later summarized. It is therefore here necessary only to refer to the facts presented to the court by the above affidavits. The important facts set forth in these affidavits are as follows:

National was organized in 1936, one year prior to the commencement of the challenged course of action, by E. Roy Fitzgerald and his four brothers who transferred to National a few transit properties in the middle west which they had owned or controlled. The brothers became, and always have been, the owners of the largest block of common stock of National and E. Roy Fitzgerald, a resident of Chicago, has been its president and chief executive officer since its formation (R. 25).

National was founded and has been developed on the policy of acquiring interests in transit systems, totally or partially obsolete, and converting them into modern transportation units. It now has an interest in transportation companies in forty-two cities, most of which are in the middle west. None of these local companies is a defendant in either the criminal or equity proceeding. Investigations respecting transportation companies have always been directed from Chicago by National and all important policies and decisions in connection with the acquisition of interests in operating companies have been made by National in Chicago (R. 169).

National has two kinds of interests in operating companies: (1) small companies principally situated in the middle west, in which it has a one hundred per cent stock ownership; and (2) an ownership of less than one hundred per cent in several large companies. These large companies include Los Angeles Transit Lines, The Baltimore Transit

Company, and St. Louis Public Service Company. The small companies situated in the middle west in which National has a one hundred per cent stock interest are the only companies over whose local operations National exercises supervision. The books of account of these companies are kept in Chicago and their purchases of supplies have been arranged in Chicago. All other companies, including all companies on the west coast, are independently operated (R. 25, 130).

This suit is based upon an alleged concert of action between National on the one hand and the suppliers on the other for a period of over ten years from and after 1937, by which the suppliers invested in securities of National and National, or certain operating companies in which it was interested, purchased certain of their requirements of motor buses, tires and tubes, and petroleum products from the suppliers (R. 25). This alleged concert of action between National, which is the alleged "head and front of the offending" (R. 156) and the suppliers was carried on in and about Chicago; the contracts negotiated between National and the suppliers were principally agreed upon in Chicago and either there executed or executed at the offices of the suppliers in Akron, Ohio (Firestone), Pontiac, Michigan (General Motors), New York City (Mack), Bartelsville, Oklahoma (Phillips) and San Francisco (Standard); the stock of National purchased by the suppliers was paid for and delivered in Chicago; the contracts for supplies were made in Chicago; and National has always been managed and run from Chicago (R. 25, 26). In short, the broad concert of action that is charged consists of the relationship between National and suppliers in and from Chicago.

Any inquiry herein will be concerned not with the individual operating companies in California or elsewhere but

with the business and overall management and financial policies of National from 1936 up to the time of trial (R. 27). While the interest of National in these local companies and the acquisition of these interests might in a different suit and under other circumstances be of importance, they have no material bearing on the decision as to the proper venue of this case. These local companies are locally operated and neither the total of their property nor the amount of purchases of supplies by them has any material bearing upon the issue now under discussion. It is not the ownership of these interests, nor the conduct of these local companies, which is the subject of inquiry (R. 128). The trial court recognized the unimportance of the local operating companies, stating that the operating subsidiaries in California were "merely vehicles through which the channeling of petroleum products, tires and other equipment were achieved" (R. 158).

Neither National nor American (which is now merged in National) does or has done any business in the Southern District of California. National does have an interest in two companies (out of about 42 operating companies) which operate in the Southern District of California, Los Angeles Transit Lines and Long Beach City Lines. These companies have always been locally managed and National's position with respect to them has been that of an owner of their securities. The Los Angeles company is alleged to have been purchased in 1945, about eight years after the concert of action is alleged to have been formed, and in this connection it is alleged that Federal supplied some funds to American in return for a portion of its preferred and common stock, and that subsequently Standard sold the Los Angeles company its requirements of petroleum products.

National owns an interest in two other companies whose principal place of business is in northern California, Pacific and the Key System. Neither of these companies has any operations in the Southern District of California. The Key System operates in and about the city of Oakland, and Pacific owns the securities of several operating companies in northern California, Washington and Utah (R. 26, 128). The Key System operates independently. National originally had an interest in Pacific but disposed of it in 1940, repurchasing all of the stock of Pacific in August, 1946. From its formation until April 1940 Pacific was managed and operated from Chicago by National. After April 1940 Pacific was managed and operated from Oakland and the supply contracts between it and the suppliers were prepared and executed by the suppliers at their main offices and executed by Pacific in Oakland. From and after August 1946 when National acquired all of the stock of Pacific, its general policies have been directed from Chicago and the dealings and negotiations between Pacific and the suppliers are carried on principally in Chicago or at the home office of the particular supplier (R. 26, 27, 130).

The assets of the Los Angeles Transit Lines and of the Key System are, in each case, substantial and the purchase of the supplies by them is likewise substantial; but this is true of numbers of local companies situated in other parts of the country in which National has an interest. The Baltimore Transit Company and the St. Louis Public Service Company each have assets substantially greater than those of the Los Angeles company or the Key System. The supplies purchased by all these operating companies are purchased locally. Neither the amount of assets of these local companies nor the amount of the supplies purchased by them have any material bearing on the relationship between National and the suppliers or with the alleged conspiracy (R. 130).

The only officer of National who resided in Los Angeles at the time of the filing of the complaint was W. Ralph Fitzgerald, a vice president of National, who was then president of Los Angeles Transit Lines.

The Government subpoenaed hundreds of documents from National in Chicago, and other companies. These documents concern principally the business of National and the long relationship between National and the suppliers which was carried on from Chicago. They reflect the fact that proof at trial will be based primarily on the testimony of persons residing in and near Chicago and on documents located in Chicago (R. 28).

The trial of this action will probably take at least several weeks. Witnesses at the trial will number at least one hundred. These witnesses will necessarily come largely from Chicago or the area near Chicago (R. 28, 29, 119). The trial in Los Angeles would cause great and unnecessary expense to, and would work a substantial hardship on, all of the defendants (R. 15, 28, 29, 119).

Relief Prayed for in the Complaint.

In addition to asking that the alleged concert of action and contracts be declared unlawful, the complaint prays for the following sweeping relief which, as will later be shown, would involve a detailed and continuous supervision of National's business and policies: that the supplier defendants divest themselves of all Common and Preferred Stocks or other financial interest in National; that National and the operating companies be enjoined from purchasing or otherwise acquiring any buses, tires, tubes and petroleum products, without first advertising for competitive bids, "pursuant to a plan to be made a part of any final order"; that National dispose of its interests in local transportation companies "as is necessary to restore competition and to

dissipate the effects of the unlawful conspiracy"; and that National be enjoined from acquiring any financial interest in any local transportation system without first obtaining the approval of the Court (R. 9).

Transfer of Criminal Prosecution to Chicago.

On July 14, 1947 motions were presented to the district court by all the defendants to transfer the criminal proceeding to the United States District Court for the Northern District of Illinois, Eastern Division (Chicago), pursuant to Rule 21(b) of the Federal Rules of Criminal Procedure. The motions were supported by the detailed affidavit of E. Roy Fitzgerald, President of National (R. 166), and a reply affidavit by him (R. 180) to a counter-affidavit (R. 175). On August 14, 1947 the court rendered a written opinion (R. 91), and entered an order (R. 102), determining that "in the interest of justice" the proceeding should be transferred for trial to Chicago. The defendants have pleaded not guilty and trial of the case in Chicago has been set for October 11, 1948.

The district court in its opinion reviewed the history and reasons for the adoption of Rule 21(b) pointing out that it was intended to remove the injustice of the prior practice "which permitted the Government to hail defendants in a conspiracy case before tribunals far removed from the place of their residence where the conspiracy, if any existed, was hatched" (R. 93). It quoted the views of various persons who had been in Government service and who were members of the Advisory Committee appointed by this Court to draft the rules including the following views of Judge Medalie of the New York Court of Appeals

who had been United States Attorney for the Southern District of New York³ (R. 93):

"* * * I feel as you would have with me, if you had preceded me in office—you take these anti-trust cases and other cases involving business operations where indictments are found by the Government—a man is blissfully attending to his business in Chicago, committing this, that or the other crime, or doing this, that or the other good deed, depending on his outlook; and he finds he must go down somewhere in New Mexico, because since his business is nationwide, you can pick out any jurisdiction in the country and indict him there.

"Now that is pretty shabby business for the great Government of the United States to indulge in. It ought not to be done. So we have another change of venue rule, that if it appears from the indictment or the bill of particulars that the crime has been committed or claimed to have been committed in more than one district, the judge in the district where the indictment has been found can order—and I am sure judges are fair and are not looking for these extra jobs—the trial in the district where it is most convenient that the case be tried.

"If, for example, a business headquarters are in Chicago, everybody is there, every book and record is there, practically every witness is there on both sides, then try it in Chicago. That is the decent thing to do and accords better with the dignity of our great government that it be done that way, rather than the shabby devices indulged in where we lose our status and our self respect. Government attorneys cannot, if they appraise themselves properly, afford to engage in that kind of thing, and perhaps it will diminish the abuse, if in fact, it doesn't succeed in its complete abolition." (Emphasis supplied.)

(3) The above views of Judge Medalie were expressed at proceedings of the Institute conducted before the New York University School of Law (Federal Rules of Criminal Procedure, N. Y. Institute, 1946).

After discussing the various criteria appropriate for determining what is "in the interest of justice" and "the facts behind the motion" the district court, in directing the transfer of the proceeding, said (R. 101):

"We have here a prosecution which would compel the chief defendants (1') to go to a place distant from the location of their business; (2') to employ or bring counsel to a distant city; (3') to bring witnesses from afar; (4') their business headquarters are in another city; (5') most of the records which relate to the transaction on which the indictment is based are there. Under the circumstance, (7') fairness would be absent and (8') the defendants would be put to unjustifiable expense, if we deprived the United States District Court for the Northern District of Illinois, Eastern Division (6) 'of its rightful jurisdiction'.

"I do not question the motive of the Government in instituting the prosecution in this district.

"But I am satisfied that a trial here would impose *unnecessary hardships on the defendants* and entail unjustifiable expense which it is the object of the new rules of criminal procedure, and especially of the rule under discussion, to avoid. *Altogether the facts spell out the vexatiousness and oppressiveness* which the Supreme Court has warned us to eschew in matters of this character." (Emphasis supplied.)

Proceedings, Opinion, and Findings in Equity Suit.

Prior to the decision of the court transferring the criminal proceeding, all the defendants had moved to dismiss this equity suit on the ground that the California court was an inconvenient and inappropriate forum.⁴ The mo-

(4) The main motion was filed by National and Pacific on August 11, 1947 (R. 60), joined in by General Motors (R. 69), and Standard and Federal which relied on the affidavits of National (R. 22). Separate motions were made by Mack which relied on the affidavits of National and filed a separate affidavit (R. 11), Firestone (R. 68) which relied on the affidavits of National and filed two separate affidavits (R. 117), and Phillips (R. 71).

tions were set for hearing on September 15. After the order of the court on August 14 transferring the criminal proceeding, the defendants filed amended and supplemental motions to dismiss the equity suit so as to include the documents and proceedings with respect to the transfer of the criminal proceeding.⁵

The district court declined to take jurisdiction. As to its power, it found that the fact that Section 12 of the Clayton Act is a special venue statute does not prohibit an application of the doctrine of *forum non conveniens* to cases arising under it; that the application of this doctrine to special venue statutes is prohibited only where there was an intent of Congress to confer an absolute right in the plaintiff to choose a venue of his own selection (R. 142); and that in respect to the Clayton Act there was no such intent, particularly because National and the five other defendants could be brought before the court under Section 5 of the Sherman Act only if "the ends of justice" so require (R. 142).

In exercising its discretion, it considered at great length all of the matters urged by the Government and in particular the public nature of the suit. It recognized the need "to balance societal and individual interests" and to maintain the proper equilibrium between private rights and public weal" (R. 144). The order of the court was not, in reality, a dismissal of the action but was in effect a transfer to Chicago. Any conceivable doubt as to this was removed by the stipulation filed by the defendants acknowledging the

(5) The main motion was by National and Pacific (R. 73), joined in by General Motors (R. 110) and Standard (R. 111), and supported by appropriate affidavits (R. 74, 123) showing the relationship with the criminal proceeding and the practical hardships which would result from a separate trial of the equity suit in California when the criminal proceeding was pending in Chicago. Separate motions were made by Mack (R. 108), Firestone (R. 106), and Phillips (R. 105). An affidavit in opposition to and a reply affidavit in support of the motion were filed (R. 112, 123).

appropriateness of a trial in Chicago (R. 132). The court stated that the "Government's determination to enforce the statute vigorously will stand unaffected" by the dismissal (R. 145). It had already decided that the facts in the criminal proceeding involved "vexatiousness and oppressiveness" (R. 101). In dismissing the action without prejudice it said (R. 143):

"That the facts in this case call for the application of the doctrine of *forum non conveniens* is apparent from the nature of the action and from the analysis of the facts presented in the affidavits which I made in the companion criminal prosecution. Practically the same affidavits are before me now. They show that the trial of the case in this district would require the chief defendants to go to places distant from the location of their business, to bring witnesses from afar, to move into this district records which are located in distant cities where their headquarters are maintained, and, in case the decree asked for by the Government is made, it will call for control of foreign corporations over a long period of years by a court which is far removed from the principal places of business of the main defendants."

After careful consideration of the points raised by the defendants and the Government, it declined jurisdiction and, in so doing, it made detailed findings of facts (R. 152-161). These findings so well set forth the facts in their proper perspective that they will be described at length:

1. Five of the defendants—National, American, Pacific, Mack and Phillips—are not doing business and are not to be found in California (R. 144).

2. The "head and front of the offending is National and its subsidiaries American and Pacific" (R. 156).

3. The basic transactions and relationships upon which the complaint is based occurred in Chicago and are the following: National and American made certain agreements with the suppliers under which the suppliers provided money to National or American against their securities, which agreements were negotiated by the different executive officers of the various corporations and were principally agreed upon in Chicago. National and American made certain agreements with the supplier to purchase supplies, which agreements were negotiated by the different executive officers of the various corporations in Chicago and were principally agreed upon in Chicago. National has always been managed from Chicago. All investigations respecting transit properties were directed from Chicago by National and American. All important policies and decisions in connection with the purchase of interests in operating companies were made by National or American in Chicago (R. 155).

4. "The essential matters to be tried from the standpoint of the defendants will be the organization of National in Chicago in 1936; its growth and operation; its relationships and contracts with the supplier defendants and other suppliers, all of which took place or stemmed from Chicago; the financing of National in and from Chicago; and the purchase of and direction and supervision of operating companies, all of which took place in and from Chicago. All these matters involve decisions and determinations made, on the highest management level, by executive officers of National and the supplier defendants in and about Chicago and the home offices of the suppliers. The essential testimony as to all these fundamental policies, decisions, and transactions must come from the executive officers of National and the supplier defendants, all of whom

reside and have their places of business far from this district. The relevant documentary proof must come from the records maintained at the home office of all these companies, all of which are far removed from this district" (R. 155).

5. The trial of the action in California would require the attendance "over a period of months" of some of the key men of National. This would include its president, two vice presidents, its treasurer, ~~its controllers, its secretary and assistant secretary~~, all of whom have their offices and reside in or about Chicago. It would also require the attendance at the trial of key employees on the accounting staff. *"This would result in a complete dislocation of its business at the place where it can least afford it—at the central place of control."* (Emphasis supplied.) The same condition exists as to the defendants, such as Firestone, General Motors, Mack, and Phillips. Any trial in California would require the chief defendants to go to places distant from the location of their business and to bring witnesses from afar. The defense of the defendant companies will be grounded on the testimony of witnesses who will have to be taken away from head offices (R. 156).

6. It is essential for the protection of the defendants that this case be tried where evidence "may be produced with the least diminution, or impairment, which place is Chicago" (R. 157). The remoteness of Los Angeles would greatly handicap National in obtaining the testimony of witnesses whom it regards as essential in developing the pertinent facts (R. 156).

7. All of the records of National are located in Chicago. Its 34 operating subsidiaries are operated and controlled from Chicago (R. 156).

8. Trial in Los Angeles "would impose unnecessary hardships on the defendants and entail unjustifiable expense which it is in the interest of justice to avoid" (R. 158).

9. The decree sought by the Government would require control and administrative supervision of National over a long period of time. Such detailed and continued supervision could be more efficiently handled by the District Court at the principal office of the defendants rather than by the California Court which is far removed (R. 156, 158).

10. "To try said criminal proceeding in Chicago, Illinois, and also to try this civil equity suit in Los Angeles, California, would cause great hardship and inconvenience, would entail substantial additional expense to the defendants of employing and familiarizing two sets of local defense counsel with the very extensive and complicated facts involved in the two proceedings, one group of attorneys in Chicago to prepare and try the criminal proceeding, and the other group of attorneys in Los Angeles to prepare and try this civil suit. * * * In short, the entire preparation for trial would have to be duplicated. Duplication of efforts would be financially costly to the defendants, as it would require substantially twice the amount of time to be spent in preparing the two actions for trial than would be required if both actions were tried in one jurisdiction. This duplication of effort would also require additional time of the many officers and employees of the defendants familiar with the transactions complained of, which time would have to be taken from the regular normal corporate activities of the defendants. All of this duplication of effort and expense would be avoided by having the criminal proceeding and this suit tried in the same court. It would not be in the interests of justice to have the criminal proceeding tried in Chicago and this equity suit tried in Los

Angeles, and the two actions should be tried in the same court" (R. 160).

11. No substantial hardship will be borne by the Government if the trial is held in Chicago (R. 159).

12. The mere location of the subsidiaries of National, or that subsidiaries of some of the defendants conduct operations in California, is not important. The transportation system in Los Angeles is only one of forty in other cities in which National is interested, and this interest in Los Angeles was acquired only in 1945, more than eight years after the alleged commencement of the concert of action in 1937. The operating subsidiaries, under the pattern of the complaint, are "merely vehicles through which the channeling of petroleum products, tires and other equipment were achieved" (R. 158).

Summary of Argument.

I.

The application of the doctrine of *forum non conveniens* involves the exercise of a sound judicial discretion upon the basis of the particular facts and there was no abuse of such discretion by the district court.

The district court (Judge Yankwich) was very sensitive to and carefully considered all of the factors upon which the Government relies in arguing that the suit should not have been dismissed. It recognized that a determination of what is in the interest of justice "imported the exercise of discretion which considers both the interests of the defendant and those of society" (R. 95). However, after weighing all of these factors and a careful scrutiny of all the facts, the district court determined that "the facts spell out vexatiousness and oppressiveness" to the defendants (R. 102). The lower court did not, as the

Government's brief would suggest, merely decide that Chicago was a "more convenient" place for trial than California.

The district court carefully considered all of the factual aspects of the litigation relating to California and concluded that these were "unimportant and irrelevant" in view of the "pattern of the complaint" and all the essential criteria (R. 157). National clearly established that a trial in Chicago was more than a mere matter of convenience, but was essential to avoid unnecessary hardship and to insure a full and fair trial. National is not merely one of nine defendants. It is the central or key defendant whose business, growth, and relationships with the supplier defendants are challenged in these proceedings. National's "business and policy situs" is in Chicago. The trial will necessarily involve for the most part National's business, its affairs, its key personnel, and its records, the source of all of which is Chicago. A trial in California "would result in a complete dislocation of its business at the central place of control." Other defendants demonstrated that if the case were tried in Los Angeles a number of their officers would have to journey there, together with masses of records, and there stay for a considerable period of time (R. 16, 119).

The fact that the criminal prosecution had been transferred to Chicago in itself justified the dismissal of the equity suit. In itself this transfer narrows the legal and factual questions presented to this Court. The district court, in dismissing the equity suit, rightly relied heavily upon the accomplished transfer of the criminal proceeding. The criminal case being set for trial in Chicago, to force National and the other defendants to try the equity suit in California would be oppressive.

II.

The doctrine of "forum non conveniens" is an "instrument of justice" which may properly be invoked by a court of equity in an appropriate case. It has been applied to almost every type of litigation and there is no sound reason, as a matter of principle or policy, to exclude this antitrust case from its application.

The doctrine is an expression of the power and duty of a Federal court of equity to decline jurisdiction when the interest of justice requires. This basic power and duty should not be dissipated unless the statute under consideration makes clear that the venue chosen by the plaintiff is obligatory.

The venue provisions of the Anti-Trust laws not only fail to manifest any intent to require the district court to take jurisdiction, if in so doing hardship and vexation is imposed on the defendants, but the provisions and policy of these statutes reinforce the duty of a court of equity to decline jurisdiction if the interest of justice so requires. In a case such as the one here presented, in which the principal defendant is not found and does not transact business in the district in which the action is brought, the ends of justice do not require that it should be brought before the court.

The criminal proceeding was properly transferred and it would be incongruous to hold that it is beyond the flexible powers of a court of equity to decline to take jurisdiction of the companion equity suit. A narrow question is presented and, at least under the present unusual circumstances, a court of equity should not be held to be under a mandate to entertain this equity proceeding.

ARGUMENT.

I.

There was no abuse of discretion by the District Court which, in declining to take jurisdiction of the equity suit, considered all matters of a public and private nature relevant to a fair exercise of discretion.

A.

The doctrine of *forum non conveniens* is a broad equitable principle to be applied "in the interest of justice."

The broad implications of the doctrine were clearly enunciated by Mr. Justice Brandeis in *Canada Malting Co., Ltd., v. Paterson Steamships, Ltd.*, 285 U. S. 413, in which it was said (pp. 422-23):

"Obviously, the proposition that a court having jurisdiction must exercise it, is not universally true; else the admiralty court could never decline jurisdiction on the ground that the litigation is between foreigners. Nor is it true of courts administering other systems of our law. Courts of equity and of law also occasionally decline, in the interest of justice, to exercise jurisdiction, where the suit is between aliens or non-residents or where for kindred reasons the litigation can more appropriately be conducted in a foreign tribunal."

In *Williams v. Green Bay & Western R. R. Co.*, 326 U. S. 549, Mr. Justice Douglas wrote for the Court (p. 554):

"We mention this phase of the matter to put the rule of *forum non conveniens* in proper perspective. It was designed as an 'instrument of justice'. Maintenance of a suit away from the domicile of the defendant—whether he be a corporation or an individual—might be vexatious or oppressive."

The doctrine has received most extensive application in the State courts.⁶ It has been applied with equal force in England.⁷

It has been applied by the Federal courts and this Court to suits in equity (*Rogers v. Guaranty Trust Co.*, 288 U. S. 123) and to cases arising in admiralty (*Langnes v. Green*, 282 U. S. 531, and *Canada Malting Co., Ltd. v. Paterson Steamships, Ltd.*, 285 U. S. 413). Recent decisions of this Court approved its application to a stockholder's derivative suit in equity (*Koster v. Lumbermens Mutual Casualty Co.*, 330 U. S. 518), and even to a common law action for damages (*Gulf Oil Corp. v. Gilbert*, 330 U. S. 501).

Statutes and principles take meaning from all the enactments forming the whole body of law bearing upon the subject.⁸ In determining whether the theory of *forum non conveniens* applies to the particular civil action under consideration, we have the benefit of the most recent definitive recognition of Congress, under Rule 21(b) of the Federal Rules of Criminal Procedure, that, under proper circumstances, the trial court "shall transfer" a criminal indictment under the anti-trust statutes. This rule, approved both by this Court and by Congress, is a clear mandate to the trial courts to place criminal actions under the anti-trust laws in the forum where justice will best be sub-

(⁶) *Universal Adjustment Corporation v. Midland Bank, Limited*, 281 Mass. 203; *The Great Western Ry. Co. of Canada v. Miller*, 19 Mich. 305 (cited by this Court in *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501).

(⁷) *La Societe du Gaz de Paris v. La Societe Anonyme de Navigation* (1926) 28 Sess. Cas. 13 (H L); *Logan v. Bank of Scotland* (1906) 1 K. B. 141.

(⁸) In *United States v. Emory*, 314 U. S. 423 Mr. Justice Reed said (p. 434) "A statute is not to be interpreted as though it were a specimen under laboratory control. It takes meaning from other enactments forming the whole body of law bearing upon the subject."

served. As stated by Judge Holtzoff, Secretary of the Advisory Committee (whose views were cited by the District Court (R. 94)), Rule 21(b) "creates a certain degree of equality between prosecution and defense in the choice of place of trial". The history of the rule makes clear that it was intended to apply to anti-trust actions; indeed, that one of its principal purposes was to correct the practice of instituting criminal anti-trust actions in a forum other than that in which the interest of justice would be subserved. It is difficult to find any reason not to apply the policy expressed in Rule 21(b) to civil actions brought under the anti-trust laws. In many, if not most, cases, the Government files companion civil and criminal anti-trust proceedings; these proceedings are founded on the same facts and they are designed to accomplish the same results. The reason for applying the philosophy of Rule 21(b) to this action is accentuated by the fact that under the stipulation filed by the defendants with the District Court this suit could have immediately been filed in Chicago, so that the result of the dismissal would have been merely a transfer to Chicago.

The growing trend to give wide scope to the doctrine is also reflected by HR 3214, adopted during the present session of Congress by the House of Representatives and now pending before the Senate, which allows the District Court "for the convenience of parties and witnesses in the interest of justice" to transfer any civil action to any other district where it might have been brought.⁹ This Bill would clarify

⁽⁹⁾ H. R. 3214 entitled "A bill to revise, codify, and enact into law Title 28 of the United States Code entitled "Judicial Code and Judiciary" which provides (§140 4a Change of Venue) "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

This bill was the culmination of four years of effort by the House Judiciary Committee (and its predecessor, the Committee on Revi-

the principle that the District Court has the same duty in *all* civil actions, as it now has in criminal actions, to transfer the case to another district if the interest of justice requires. By authorizing the transfer of a civil action, in lieu of a dismissal, this bill would accomplish the same result as is now achieved by the equitable doctrine of *forum non conveniens*.

B.

The District Court's discretion was properly exercised in the light of all the circumstances, which included the hardship and vexatiousness of a trial in California, involving the history of National whose "business situs" is in Chicago, the prior transfer of the companion criminal action, and the continuing control of National prayed for in the complaint.

This Court stated in the *Gulf Oil* case (p. 508): "The doctrine leaves much to the discretion of the court to which plaintiff resorts, and experience has not shown a judicial tendency to renounce one's own jurisdiction so strong as to result in many abuses." There can be no delusive exactness in applying the doctrine. As stated by this Court in *Williams v. Green Bay & Western R. R. Co.*, 326 U. S. 549, 557. "Each case turns on its facts." However,

sion of Laws) who sought and obtained the advice and assistance of the late Chief Justice Stone of this Court and two of his associates, a committee of judges appointed by the Judicial Conference, representative of the Attorney General's office, and others. The bill passed the House by a vote of 342 to 23 (93 Cong. Rec. No. 128, pp. 8550-8559).

The Committee Report states (Appendix, Reviser's Notes—p. A132): "Subsection (a) was drafted in accordance with the doctrine of *forum non conveniens*, permitting transfer to a more convenient forum, even though the venue is proper. As an example of the need of such a provision, see *Baltimore & Ohio R. R. Co. v. Kepner* 1941, 62 S. Ct. 6, 314 U. S. 44, 86 L. Ed. 28, which was prosecuted under the Federal Employer's Liability Act New York, although the accident occurred and the employee resided in Ohio. The new subsection requires the court to determine that the transfer is necessary for convenience of the parties and witnesses, and further, that it is in the interest of justice to do so."

there is no basis for any fear that trial courts will be zealous in refusing to take jurisdiction. In at least three very recent cases,¹⁰ three District Courts decided, as a matter of discretion, that the particular facts did not warrant the application of the doctrine. The *Gulf Oil* and *Koster* cases presented unusual situations, as does the present case; in those cases the District Court in its discretion refused to take jurisdiction and the exercise of this discretion was not interfered with by this Court.

This Court has consistently held that where the District Court exercised its discretion under the doctrine of *forum non conveniens* the exercise of such discretion will not be disturbed unless abused. (See *Charter Shipping Co. v. Bowring*, 281 U. S. 515, 517; and *Canada Malting Co., Ltd. v. Paterson Steamships, Ltd.* 285 U. S. 413, 418). In *Stroud v. United States*, 251 U. S. 15, this Court in refusing to disturb the action of the trial judge in a criminal case in denying a motion to change the venue and to quash the panel of prospective jurors on the ground of local prejudice said (p. 20): "Matters of this sort are addressed to the discretion of the trial judge, and we find nothing in the record to amount to abuse of discretion such as would authorize an appellate court to interfere with the judgment."

The Government did not find itself able to urge that the lower court was guilty of an abuse of discretion. Instead,

(10) In *Fifth and Walnut Inc. v. Loew's, Inc.* (Civil No. 36-736, S. D. N. Y.), decided January 23, 1948, an action for damages under the antitrust laws, and in *Securities and Exchange Comm. v. Werner* (Civil Action No. 6774, W. D. Pa.) decided January 21, 1948, an action by the SEC under the Securities Act of 1933 to enjoin fraudulent representations in the sale of securities, the District Courts, while questioning their power, decided that as a matter of discretion the particular facts did not warrant the application of the doctrine. In *United States v. Phillips Screw Co.* (Civil Action No. 47-C-147, N. D. Ill. October 12, 1947) the court denied a motion to dismiss an anti-trust proceeding.

the most that the Government's brief contends is that the dismissal of the action was wrong because the Government had some substantial reason to choose the Southern District of California as a forum and that no such action should be dismissed unless the Court is "able to conclude that the government clearly abused the discretion in the selection of venue given it by the statute" (Brief, p. 22). It also enlarges on the fact that the court found "no bad faith" by the Government. We submit that these positions are not valid—the real issue is whether under all of the circumstances there was an abuse of discretion in dismissing the case. The district court could recognize good faith on the part of the Government and still with perfect consistency could, and did, dismiss the action. The question of venue in cases of this nature may not always be easy of decision but any appeal from the lower court's decision must rest upon the question whether the court exceeded the bounds of a reasonable discretion. If it is necessary to show that the Government "clearly abused its discretion" in instituting action in a particular forum, it would be virtually impossible for a defendant to show facts justifying a dismissal. Any such rule would be tantamount to a decision that (even though it is assumed that the statute authorizes a dismissal) the equity court has no power to apply the doctrine.

1. *All the matters relevant to a fair exercise of discretion were taken into consideration by the District Court.*

The court in declining jurisdiction found that the essential issue is an alleged concert of action between National and the suppliers which rests upon a long relationship stemming from Chicago. It found that a trial in California would result in a dislocation of the business of National, Firestone, General Motors, Mack and Phillips (R. 156).

It did not merely determine that Chicago was a "more convenient" place for trial than California. It was influenced by strong and compelling factors showing unnecessary hardship and vexatiousness to the defendants, particularly National.

The court had before it full proof of the hardships which would be visited on the defendants by a trial in Los Angeles. After careful consideration it made detailed findings of fact showing such hardships. We believe it unnecessary further to analyze these findings which have been summarized. Likewise it is unnecessary further to comment on the detail of facts supporting these findings which were set forth in affidavits by officers of three of the defendants and which have been commented upon. The court's findings are well supported by the facts and these findings seem conclusive.

This resulting hardship is not obviated by referring to the fact that defendants in anti-trust actions may often be corporations doing a "multi-state business" (Brief, p. 20). That National is interested in operating companies situated in various states, or that other of the defendants may do business in other states, has no bearing on the question of hardship which would result from a trial in California. While certain types of anti-trust actions may involve alleged restraints which stem from basic activities which are nationwide in their source and situs,¹¹ the present proceedings

(11) In *Tivoli Realty, Inc. v. Interstate Circuit, Inc., et al.*, (C. C. A. 5th), decided March 18, 1948, suit was brought in Delaware by the owner of a motion picture theatre against fourteen defendants, twelve of whom were the principal producers and distributors of motion pictures and two of whom operated a chain of theatres in Texas, charging that the defendants had a monopolistic position in the exhibition of motion pictures in various cities and denied plaintiff's theatre an opportunity to compete for pictures. Five of the defendants were not in any way subject to jurisdiction in Texas. Two of the defendants, Delaware corporations, filed suit in

are not of that character. The multitude of surrounding facts and circumstances constituting the relationship between National and the suppliers, are shown by the affidavits of defendants to have existed in or to have stemmed from Chicago. The Government's brief in pointing out the wide latitude of proof in these actions states (p. 20): "It (the combination or conspiracy) is rarely embodied in a single instrument and the proof of its existence is drawn from a course of dealing or from communications, memoranda, verbal agreements or written contracts involving the various parties and made or entered

the District Court of Texas to enjoin the plaintiff from prosecuting the action in Delaware. The circuit court reversed an order granting a temporary injunction since (1) as a matter of comity any application should have been made to the district court in Delaware; (2) in no event was the doctrine applicable since five of the defendants were not even subject to the jurisdiction of the Texas court and there were not two forums available to the plaintiff; (3) suit against the defendants in Delaware, where they were incorporated, could not be regarded as "inconvenient"; and (4) Delaware was more convenient since "the alleged conspiracy is nation-wide and the necessary witnesses, in the main, would have to be brought to Texas from New York which is much closer to Delaware than is Texas". By way of dictum, the Court said at the conclusion of its opinion that the Anti-Trust and Employers' Liability Acts "cannot be distinguished in principle" and mentioned the importance of protecting venue where "a nation-wide conspiracy in restraint of commerce is alleged". The present case is basically different from the *Tivoli* case in that (1) a Federal court in one district does not here attempt to enjoin action in another; (2) all the defendants here are subject to jurisdiction in Chicago; (3) National and all the defendants, other than Federal, are not seeking to transfer the suit from the state of their domicile; and (4) Chicago, unlike Texas in the *Tivoli* case, is plainly the only convenient forum. Moreover, the present alleged restraints pivot essentially about one central defendant and have a source and situs in Chicago, whereas the alleged restraints in the *Tivoli* case were nation-wide in their source and involved for the most part coordinate producers and distributors. As to the dictum with respect to the Antitrust and Employers' Liability Acts, we submit that the Antitrust Laws as a whole and their underlying policy show no intention under any and all circumstances to preclude the application of the doctrine of *forum non conveniens*. The *Kepner* case was decided in the light of the peculiar legislative history and underlying policy there involved.

into at various times." In this case a "course of dealing" for a period of over ten years will be the subject of inquiry and can be adduced only by witnesses living in or about Chicago and documents and papers existing in Chicago.

The Government presents the fact that National has acquired an interest in two companies (Los Angeles and Long Beach) which operate in the Southern District of California; that National paid \$12,800,000 for the securities of the Los Angeles Company, and that Standard supplied \$1,000,000 to American for this purchase; that at a later date Standard entered into a contract with Los Angeles for a sale to it of its requirements of petroleum products; that National has an interest in Pacific (which owned securities in companies which do business in northern California and two contiguous states) prior to 1940, and that it acquired all of the stock of Pacific in 1946; that in the first eight months of 1946 the Los Angeles and Long Beach Companies purchased more supplies from the suppliers than did National's subsidiaries which it supervised from Chicago; and that it intends to subpoena a number of witnesses from the west coast at the trial (Brief, p. 9).

None of the local companies, upon the ownership of which the Government enlarges, are defendants. The facts respecting them presented by the Government do not meet the facts upon which the defendants based their motion. National's interest in companies located in the Southern District of California may give the court jurisdiction, but neither that interest, nor the interest in other companies operating on the Pacific coast, nor the purchase of supplies by these companies, represent any of the material part of the facts which will be adduced at trial by the Government, and surely no part of the involved structure or historical development which must be adduced by the defendants. If

the facts related by the Government be taken as true, the reasons for the dismissal of the action still remain. On the Government's theory, venue in any community in which National has an interest could be defended. The court considered the facts set forth in the opposing affidavit and found that they had no significant bearing, saying that the operating companies "are merely vehicles through which the channeling of petroleum products, tires and other equipment was achieved" (R. 158); that the counter-affidavit "does not deny the facts relating to National and to the other non-resident defendants" (R. 157); and that the emphasis on local operations "does not conform to the pattern of the indictment," since the operating companies were "merely vehicles through which the channeling of the petroleum products, tires, and other equipment was achieved" (R. 158).

The Government urges that since the intent of Congress was to obtain an early trial of actions under the anti-trust statutes, and since these motions might result in delay in some cases, the court should not dismiss any action unless there is no substantial basis for the venue selected (Brief, p. 19). We submit that this factor is but one of a number to be considered by the trial court in determining whether, in its sound discretion, to dismiss the action. The district court did consider this as well as other questions, saying that this suit could be refiled in the Northern District of Illinois without any further attack on venue, since the defendants had formally agreed to this (R. 145). Since this case could have been instituted in Chicago immediately upon the dismissal in Los Angeles and since, as found by the court in the most elaborate detail, a trial in Los Angeles would impose great hardship on the defendants, the only justification that remains for urging that the lower court's order be reversed is in order to subserve an alleged con-

venience of the Government on the one hand, while accomplishing a great hardship on the defendants on the other. If the lower court's order is reversed, it may be that the Government will be slightly inconvenienced but certain it is that there will be a substantial hardship visited upon the defendants.

In any case there would seem to be no great danger of delay by reason of motions of this nature. They are in almost all cases part and parcel of other motions made at the commencement of the action. Here the motion was combined with the motion for a bill of particulars (R. 60). The Government could have had this equity suit at trial in Chicago at the present moment, or surely could have had it set for the fall term if it so desired, just as the criminal case is there set for trial in the fall.

The Government challenges the findings of the court as to the convenience of the defendants. It first says that none but National made any serious showing in support of a trial of the cause in Chicago (Brief, p. 26). We respectfully submit that this is not entirely accurate. Firestone filed an affidavit saying that the papers subpoenaed from Firestone disclosed the names of sixteen members of the Firestone organization, all but one of which are residents of Akron or Chicago and that it is possible that each of these persons might be called as a witness (R. 119). Mack also filed an affidavit stating that its records are maintained at its New York office and that to carry on a proper defense in Los Angeles would put it at a serious disadvantage and work a substantial injustice (R. 16). It must be stressed that all defendants joined in the motion. Therefore, the mere fact that other companies, such as General Motors, which has its principal place of business in Detroit, and Phillips, which has its principal place of business in Bartlesville, Oklahoma, did not file affidavits alleging hardship or

inconvenience, which would be more or less repetitious, cannot support a conclusion that they would fail to be seriously inconvenienced and oppressed by a trial in Los Angeles. Moreover, the Court found as to all defendants, including Standard and Federal, that it is essential that "this case be tried at a location where the evidence to refute this alleged conspiracy may be produced with the least diminution or impairment, which place is at Chicago, Illinois" (R. 157).

The Government also attempts to belittle the effort which must be put forth and the hardship which would be suffered by the defendants if the case were tried in Los Angeles. The affidavits of the defendants reflected the fact that the number of witnesses might reach to 100, that they would come largely from the Chicago area, and that the case would take a long time to try. Irrespective of any speculation as to the exact length of the trial or the exact number of witnesses who would be called, the fact still remains that it would be a long trial, requiring a great mass of documents and records and the testimony of a large number of witnesses, that these documents and records would have to be brought from Chicago, and that these witnesses would have to journey from Chicago and stay in California.

The idea advanced by the Government that the calling of witnesses can be avoided by deposition and that interrogatories or requests for admission can be used by the defendants is a severe oversimplification of the situation (Brief, p. 27). The defendants are entitled to their day in court, and in order to get this and to get a fair trial, it will be necessary for them to have available many witnesses, including their executive officers, and to introduce many exhibits. Proof in a case of this kind cannot rest on mere depositions or interrogatories.

All of the points urged by the Government—the ownership of an interest in some local companies by National; the purchase of supplies by these companies; the desirability of assuring prompt-adjudication of civil proceedings under the anti-trust laws; that the defendants do business in more than one state and that hence the choice of the proper forum presents some difficulty; and that there is a “public interest” in suits of this nature were carefully considered by the district court and were fully covered by its findings of fact and its opinion. With full consciousness of the weight of these arguments, the court found that although a court should be more disposed to withhold relief than when dealing with private interests (R. 143), and although the court should aim “to balance societal and individual interests and to maintain the proper equilibrium between private rights and public weal” (R. 144), this case should be dismissed without prejudice to the right to refile it in another district.

2. The prior transfer of the criminal proceeding in itself justified the dismissal of the equity suit so that it might be tried in Chicago.

The Government urges that if any inconvenience results from the transfer of the criminal case to Chicago, while the equity suit is tried in Los Angeles, the defendants have brought it upon themselves. Defendants were entitled to the protection of Rule 21(b) and the factual showing which they made induced the Court to transfer the criminal prosecution “in the interest of justice”. The defendants should not be penalized or prejudiced because of the favor accorded to their application in the criminal proceeding. The Government’s contention would require defendants to forego the protection of Rule 21(b) and make it a “dead letter”.

A most vexatious situation would result if the equity suit is to remain before the court in California while the criminal proceeding is pending in Chicago. Apart from the hardships to the defendants, this court in the *Gulf Oil* case recognized (p. 508) that "Factors of public interest also have a place in applying the doctrine". The Government refers (Brief, p. 23) to the desirability of avoiding a congestion in the calendar of the Federal courts in large metropolitan centers in the interest of the "convenience and efficiency" of the courts. What more striking instances of "court inefficiency" could there be than having the two companion proceedings determined in two far removed places with the burden on two separate judges, far removed, to familiarize themselves with all the aspects of the proceedings? The "convenience and efficiency" of the courts should require that the Federal Court in Chicago, where the criminal proceeding is pending as an accomplished fact (to be tried October 11, 1948), deal with the equity suit. Any possible impediment to the power of the Chicago court to deal with the equity suit has been removed by the stipulation filed by defendants with the district court in California acknowledging the appropriateness of a trial in Chicago (R. 132).

Separate proceedings before the Chicago and California courts would beget a host of difficulties and hardships and be vexatious to the defendants. There would be an inevitable duplication in the burdens of trial, time of parties and witnesses, time and efforts of counsel, and expenses. A trial of the equity suit in Chicago would seem to subserve the convenience of the Government itself. The Government in a cavalier fashion dismisses the real hardships to the defendants from separate proceedings in far removed places by saying that a conviction in the criminal proceeding would leave only the question of relief to be tried in the

equity suit (Brief, p. 31): These defendants firmly deny that there has been any violation of law, criminal or civil; are they to infer that the equity suit will be abandoned in the event that the alleged restraints are not established in the criminal case? On the other hand, the equity suit seeks the widest conceivable relief and it will involve substantially all of the matters presented in the criminal suit. Again, the defendants are unable to take seriously the suggestion that if in the equity case the defendants are successful, there will be a plea of *nolo contendere* in the criminal action. All of this is an easy evasion of the fact that the criminal case was properly transferred and it is now sought to try the same case on the civil side on the west coast while the criminal action will be tried in the middle west.

3. *The prayer for continuing control of National was a compelling reason to dismiss the equity suit.*

After commenting on the sweeping relief requested in the equity suit the district court found that the detailed and continuing supervision of National, prayed for in the complaint, could much more efficiently be handled in Chicago (R. 158). This factor was very properly considered by the lower court.¹²

The Government seeks to belittle the continued supervision of National by the court which will be necessary if

(12) While Mr. Justice Black dissented in *Koster v. Lumbermen's Mutual Casualty Company*, 330 U. S. 518 (a derivative suit by a policyholder of an insurance company for breach of trust and an accounting), he recognized with respect to such a case as the present (p. 532): "There may be rare instances in which a Federal Court could decline to provide an equitable remedy against multi-state corporate defendants. A prayer for relief which requires . . . *the detailed and continuing supervision of the affairs of a defendant corporation whose headquarters is beyond the jurisdiction of the court would in my view constitute such a situation.*" (Emphasis supplied.)

the Government succeeds (Brief, p. 29). We believe that the prayer of the complaint itself establishes the detailed and lengthy supervision which would be necessary. The following relief is asked (R. 8).

That the suppliers be required to dispose of their stock interest in National. The suppliers own a substantial amount of preferred stock of National and some of its common stock. The disposal of such stock holdings will require a major financial operation requiring negotiations and doubtless a public offering of securities. This will take a long period of time, with recourse to the court from time to time.

That the agreements between National and the suppliers for the purchase of supplies be declared void. In this connection, both National and the public will need protection from the court. The ability of the operating companies to purchase certain supplies, particularly petroleum products, is severally limited. In order that the operating companies may render adequate service to the public, it is important that they have the sources of essential products and supplies. If the supply contracts are to be declared void, this subject may well require attention, over a period of time, from the court supervising any such decree.

That the operating companies be enjoined from purchasing equipment except upon competitive bids under "a plan to be made a part of any final order". This is a complicated subject. A variety of type and kind of motor vehicle and streetcar is used by the operating companies. Different kinds of service demand different kinds of vehicles, and different kinds of vehicles require different kinds of petroleum supplies or power and different kinds of tires and equipment. Communities change and service must change. This might well require the supervision of the court over a long period of time.

That National be required to dispose of its interests in certain operating companies. There are 42 of these operating companies throughout the United States. The investment market for securities of city transit companies is badly disrupted and is, at best, always limited. In order to dispose of any material part of these securities long periods of negotiation will be necessary, and it would seem that National would have to go back to the court on many occasions.

That National be enjoined from acquiring local transportation interests without the consent of the court. In order to obtain such consent, it would seem that National might have to demonstrate to the court its own competitive situation and the nature of the proposed interest. This would make necessary that National go to the court on every occasion.

In short, if the Government were to obtain a decree in this case bearing any resemblance to that which it demands, National, and its executive officers, would have to establish themselves in California in order to be able to go to the court from time to time for supervision and direction.

II.

It was not beyond the power of the District Court, which had transferred the trial of the companion criminal proceeding "in the interest of justice", to decline jurisdiction of the civil anti-trust proceeding.

A.

The mere presence of some special venue provision does not preclude the application of the doctrine.

As pointed out by the District Court in its opinion, there is nothing unusual about a "special venue provision." Congress in respect to a great number of subjects has legis-

lated that actions might be brought in a forum in which they could not be brought but for such legislation (R. 138). Illustrative are: actions relating to copyrights (17 U. S. C. 35); patent infringements (28 U. S. C. 109); actions for the recovery of taxes under the Internal Revenue Act (28 U. S. C. 135); and stockholders' derivative suits (28 U. S. C. 112 (a)). The only legislation which has been construed by this Court to bar the application of the doctrine is the Federal Employers' Liability Act (45 U. S. C. 56), so construed in *Baltimore & Ohio R. Co. v. Kepner*, 314 U. S. 44, and *Miles v. Illinois Central R. Co.*, 315 U. S. 698. The *Kepner* and *Miles* cases rest upon the peculiar legislative history of the Federal Employers' Liability Act and their rationale is wholly foreign to the present case.

In the *Kepner* case a railroad brought suit in the Ohio court to enjoin a resident of Ohio from prosecuting a claim under the Federal Employers' Liability Act in the Eastern District of New York. Originally the venue of actions under the Federal Employers' Liability Act was left to the general statute (Judicial Code, Sec. 51, 28 U. S. C. 121) which then fixed venue in districts in which the defendant was an inhabitant, but, as stated by Mr. Justice Reed in his opinion in the *Kepner* case (p. 49), "Litigation promptly disclosed what Congress considered deficiencies in such a limitation of the right of railroad employees to bring personal injury actions". As a result, Section 6 of the statute was amended to allow the injured employee to sue in "either the district where the defendant resided, or in which the cause of action arose, or in which the defendant was doing business at the time the action was commenced"; to give the state courts concurrent jurisdiction; and to provide that no case brought in a state court "shall be removed to any court of the United

States", (45 U. S. C. 56). A majority of the Court (Chief Justice Stone and Justices Frankfurter and Roberts dissenting)¹³ determined in the *Kepner* case that the state court could not enjoin suit in a distant Federal court since there was a legislative intention to create a "right of action" not to be "frustrated for reasons of convenience or expense". A majority of the Court in the *Miles* case (Chief Justice Stone; Justices Frankfurter, Roberts and Byrnes dissenting) decided that the State Court in Tennessee could not enjoin the further prosecution of a suit in the State Court of Missouri. The Court relied upon the legislative history including the provision of Section 6 prohibiting the removal of a suit properly instituted in a State Court.

The limitation of the *Kepner* case is succinctly phrased in a concurring opinion by Mr. Justice Jackson in the *Miles* case¹⁴ (315 U. S. 698, 706, 707):

"Realistically considered, the issue is earthy and unprincipled. So viewed, the real issue is whether a plaintiff with a cause of action under the Federal Employers' Liability Act may go shopping for a

(13) Mr. Justice Frankfurter noted that the majority opinion did not "question the familiar doctrine of *forum non conveniens* under which a court having statutory jurisdiction may decline its facilities to a suit that in justice should be tried elsewhere" and concluded (pp. 57, 58):

"Nothing in the history of the 1910 amendment indicates that its framers contemplated any such vast transformation in the established relationship between federal and state courts and in the duty of the federal courts to decline jurisdiction 'in the interest of justice'."

"The declaration by Congress that a court has jurisdiction and venue is not a command that it must exercise its authority in such a case to the unnecessary injury of a defendant and the public. The doctrine has been consistently followed in a series of unanimous decisions."

(14) Since there were four dissents, this concurring opinion of Mr. Justice Jackson was necessary to the majority opinion.

judge or a jury believed to be more favorable than he would find in his home forum."

Such being the major burden under which the workmen and the industry must function, I see no reason to believe that Congress could not have intended the relatively minor additional burden to interstate commerce from loading the dice a little in favor of the workman in the matter of venue. It seems more probable that Congress intended to give the disadvantaged workman some leverage in the choice of venue, than that it intended to leave him in a position where the railroad could force him to try one lawsuit at home to find out whether he would be allowed to try his principle lawsuit elsewhere."

Thus, the *Kepner* and *Miles* decisions were merely a recognition of the legislative purpose to allow an injured employee "to shop for a favorable forum", the intent being "to load the dice a little in favor of the workman in the matter of venue". In construing the majority opinion in the *Kepner* case the Court below said: "Only when the legislative history shows an intent to confer a right so absolute as to exclude any interference on the part of courts are we justified in failing to give effect to this doctrine" (R. 205).

The argument that any type of "special venue provision" manifests a policy to render inapplicable the broad equitable doctrine of *forum non conveniens* is unconvincing. It reflects a strange desire for certainty in dealing with the plastic and flexible powers of a court of equity. A special venue provision as such is merely an enlargement of the permissive forums in which suit might be brought. Section 51 limiting suit to the residence of plaintiff or defendant might be so rigid as to prevent a trial in the

only convenient forum; or possibly in any forum. However, the relaxation of the requirements of Section 51 and the authorization of some other forum in an appropriate case should not put a defendant at the mercy of a plaintiff and deprive him of the benefits of the equitable doctrine unless, of course, there is a clear legislative mandate that the plaintiff's choice of venue should not be interfered with. The District Court properly construed the *Kepner* case to say: "Not that any special venue act excluded the application of the doctrine of inappropriate forum, but that the particular special venue statute under consideration, in the light of its history, excluded the application of the doctrine" (R. 140).

The *Koster* case, recently decided by this Court, itself involved a stockholders' derivative suit brought under a special venue statute which was added to Section 51 of the Judicial Code and provided "except that suit by a stockholder on behalf of a corporation may be brought in any district in which suit against the defendant or defendants in said stockholders' action, other than said corporation, might have been brought by such corporation and process in such cases may be served upon such corporation in any district wherein such corporation resides or may be found". The effect of this amendment was to allow the corporation, provided it resided or was found in the district, to be sued in any district in which suit might have been brought against the other defendants. No member of the court considered that this special venue provision deprived the trial court of its inherent power, which it exercised, to decline jurisdiction. The Government's statement (brief, p. 33) that the statute involved in the *Koster* case "is not a special venue statute within the meaning of the distinction drawn in the *Gulf Oil* case" is itself a recognition that the doctrine

of *forum non conveniens* must apply to some special venue statutes.

In *Urguhart v. American-LaFrance Foamite Corporation*, 144 F. 2d 542 (U. S. Ct. App., D. Col.), cert. den. 323 U. S. 783, the Circuit Court of Appeals held that the doctrine was applicable to a suit for patent infringement notwithstanding that it was brought under a statute with special venue provisions allowing suit to be brought in the district where the defendant has committed acts of infringement and has a regular and established place of business (Title 28, U. S. C. A., Sec. 109). While the District Court dismissed the complaint on the ground that the defendant did not have a regular and established place of business in the district, the Circuit Court found the defendant did have such a place of business but remanded the case to the district court "to determine whether it should retain jurisdiction over this case applying the principle of *forum non conveniens*."

B.

The venue provisions of the anti-trust laws, especially Section 5 of the Sherman Act and Rule 21(b) of the Federal Rules of Criminal Procedure, not only fail to manifest any intent to require the District Court to take jurisdiction but accentuate the duty of a Court of Equity to decline to take jurisdiction if in a proper case, as here, the interest of justice requires.

The present suit has been brought under Section 12 of the Clayton Act authorizing suit where the corporation is an inhabitant or "where it may be found or transacts business". While there are nine corporate defendants, the complaint alleges that only General Motors and Standard transact business and are found within the district (R. 1).

Rule 21(b) manifests an intent to vest the courts with control over the forum of an antitrust proceeding. It is

no answer to say that there is no literal counterpart in equity practice of Rule 21(b). It is an essential and integral part of the anti-trust laws. This same intent is manifested by the action of the House of Representatives in passing the Bill (HR 3214) granting authority to a district court to transfer any civil action to another district if this transfer is in the interest of justice and the convenience of the parties (*supra*, footnote 9).

All of the defendants, other than General Motors and Standard, are amenable to process, if at all, only by virtue of Section 5 of the Sherman Act which provides that "whenever it shall appear to the court before which any proceeding under Section 4 of this Title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not". (Emphasis supplied.)

Irrespective of what inferences might otherwise have been drawn from Section 12, Section 5 sanctions the power of the court to decline jurisdiction on the application of defendants who are not found or who do not do business in the district. The provision of Section 5 authorizing the court to bring in other parties "whenever it shall appear to the court . . . that the ends of justice require" is plainly inconsistent with any intention by Congress that the Government's choice of forum is absolute. There is a striking similarity between the language of Section 5 authorizing a party as National (which is not an "inhabitant" or "found" or "transacting business") to be made a party only when "it shall appear to the court . . . that the ends of justice require" and Rule 21(b) of the Criminal Rules requiring a transfer "in the interest of justice". The effect and impact of statutory provisions upon the

broad principles which guide and control the action of a court of equity is not static or immutable, and Section 5 must now be deemed, in view of the development of the entire body of law dealing with anti-trust proceedings, to vest a court of equity with the discretionary power to decline jurisdiction. Unless there are most compelling reasons to the contrary, the powers of a court of equity are not to be so straight-jacketed.

We respectfully represent that Congress did not intend that Section 5 of the Clayton Act should be used to impose hardships of the nature of those which would be visited upon the defendants in this case. Here we have an action commenced in Los Angeles in which primary jurisdiction was claimed over two defendants (General Motors and Standard, R. 1) neither of which, although substantial in size, is the principal defendant in the action. This principal defendant is admittedly National. The Government does not, in reality, deny the hardships which would be placed upon National and the other defendants by a trial in Los Angeles. Under these circumstances we respectfully represent that "the ends of justice" do not require that National be brought into the suit in Los Angeles.

There is nothing in the legislative history or consideration of Section 12 of the Clayton Act to require this court to hold that the Federal courts may not under any circumstances decline jurisdiction in the interest of justice. On the contrary, the "Congressional history" clearly manifests an intention to protect a party from vexatious litigation in a particular forum.¹⁵

⁽¹⁵⁾ When the Clayton Act was pending in Congress, an attempt was made to amend Sections 4 and 12 so as to allow the commencement of civil anti-trust actions against a corporation in any district where the corporation "had an agent". However, the proposed amendments met with considerable opposition because of the great vexatiousness and inconvenience it might cause corpora-

There is no basis for urging that Congress intended to allow the government to shop around for what it may consider the most favorable forum, regardless of the vexatiousness and oppression to the defendants. Surely, the Government is not at a disadvantage, with respect to the forum for the prosecution of any anti-trust action, and

tions located and doing business in far removed localities. In adversely commenting on the proposed amendment to Section 4 Representative Scott stated (Cong. Rec. Vol. 51, Part 10, p. 9467):

"It would not include any agent. The amendment enlarges the present interpretation of the word 'found' as applied to the corporate jurisdiction, and permits suit to be brought, with absolute discretion on the part of the plaintiff, in any district in which the defendant may have an agent, without defining the character of that agent.

"Now, we all know that there is an almost infinite number of characters of agents. Corporations transacting interstate business have agents, we may say, in practically every state of the Union for some purpose. Surely it can not be possible that the gentleman would attempt to confer jurisdiction and venue upon the Federal Court in every district in the United States where any agent can be found, regardless of the question whether the corporation is domiciled in that State or district, or whether it is doing business there."

The amendment to Section 4 which applies to treble damage actions by private litigants was adopted by Congress but the amendment to Section 12 was dropped. Section 12 as finally passed by Congress applies only to corporations residing, or transacting business, or which may be found in the district, and National, the hub of this entire alleged conspiracy and the principal defendant in this action, neither resides, nor transacts business, nor can it be found in the Southern District of California.

During discussions on the House Floor, an amendment was also offered containing the same venue provision as is contained in the F. E. L. A.—giving state courts concurrent jurisdiction and denying a right of removal to Federal Courts. Rep. Cullop, who offered the amendment, argued that plaintiffs were required to travel great distances to bring suit and the amendment would allow them to sue in their home districts. This amendment was rejected. Cong. Rec. Vol. 51, Part 10, pp. 9662-9664. The rejection of the very provision that has been used to support the conclusion that Congress intended plaintiffs to have an absolute choice of forum in F. E. L. A. cases (*Miles v. Illinois C. R. Co.*, 315 U. S. 698, 702), establishes that the venue provisions in the Clayton Act were not intended to give plaintiffs any such absolute choice of forum.

there is no reason, if we may again refer to the language of Mr. Justice Jackson, "to load the dice" in its favor with respect to the place of suit. Since the criminal proceeding has been transferred under Rule 21(b) it would be incongruous if it were held to be beyond the power of a court of equity to decline to take jurisdiction over a civil proceeding.

To hold that a court of equity has no power to dismiss an equity proceeding, when a companion criminal prosecution has been properly transferred under Rule 21(b), would largely defeat the purpose of the Criminal Rule. Such a holding would deprive litigants of the practical advantages of the rule. The court has, in reality, a narrow question to determine—whether, when a criminal prosecution on the same facts is pending in another district, a Federal district court, sitting as a court of equity, has power to dismiss a sister civil suit brought under the anti-trust laws, to the end that it may be brought in the district in which the criminal prosecution is pending. We submit that there is nothing in the statutes to deny, and that every equitable and practical reason justifies, the existence of this power by the district court.

Conclusion.

The judgment of the District Court should be affirmed.

April, 1948.

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Office: Supreme Court, U.S.

FILED

JUN 21 1948

CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 544.

UNITED STATES OF AMERICA,

Appellant,

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY
LINES, INC., PACIFIC CITY LINES, INC., *et al.*

PETITION FOR REHEARING.

MARTIN D. JACOBS,

Counsel for National City Lines, Inc.

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 544.

UNITED STATES OF AMERICA,
Appellant,

vs.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC.,
PACIFIC CITY LINES, INC., et al.

PETITION FOR REHEARING.

Comes now the above named appellee, National City Lines, Inc., and presents this, its petition for rehearing of the above-entitled cause, and, in support thereof, respectfully shows:

(a) The majority opinion of the Court (Mr. Justice Rutledge), as well as the concurring opinion of Mr. Justice Jackson, appear to be based upon an erroneous assumption that the lower court had acquired "personal jurisdiction" of all the defendants. Thus, the majority opinion states:

"The only question presented concerning the court's power is whether, having jurisdiction and venue of the cause and *personal jurisdiction of the defendants*, the court also was authorized to decline to exercise its jurisdiction upon finding, without abuse of discretion, that the forum was not a convenient one within the scope of the non-statutory doctrine commonly, though not too accurately, labeled *forum non conveniens*." (Emphasis supplied.)

And in the concurring opinion, Mr. Justice Jackson states:

"Congress has here provided a practice by which any defendant, who has not subjected himself to suit in the district; may obtain the same protections which the *forum non conveniens* doctrine would afford.

"In this case, the defendants, who might be entitled to urge the doctrine, *have not resisted or contested the order bringing them into the suit.* It was by so doing that they could have shown that the ends of justice would not be served by such action. Instead, they desire to submit to being brought in and then use their position to throw the whole case out. This, I think, cannot be done." (Emphasis supplied.)

However, the record conclusively demonstrates that the Government never obtained an order bringing into the suit (R. 231), and the lower court never acquired "personal jurisdiction" of six of the nine defendants, including the principal defendant, National City Lines, Inc., referred to as National. (The other five are Mack Manufacturing Corp., Phillips Petroleum Company, Federal Engineering Corporation, Pacific City Lines, Inc. and American City Lines, Inc.) The rationale of both opinions of this Court supporting a reversal seems to be that "personal jurisdiction" within the provisions of the anti-trust laws was obtained over National and all other defendants, and the lower court was accordingly precluded from declining jurisdiction under the doctrine of "*forum non conveniens.*" We respectfully submit that since "personal jurisdiction" was not obtained over National and five of the other defendants, the keystone of the decision is removed and a rehearing should be granted.

(b) The assumption that the lower court had acquired "personal jurisdiction" of all nine defendants was appar-

ently based either (1) on the mistaken belief that National and five of the other defendants were amenable to process under Section 12 of the Clayton Act (15 U. S. C. A., Sec. 22) and that valid service of process issued in accordance with the provisions of that section had been made on them; or (2) on the mistaken belief that the lower court had acquired jurisdiction of these six defendants, by service of process made pursuant to an order issued in accordance with the provisions of Section 5 of the Sherman Act (15 U. S. C. A., Sec. 5).

(c) The lower court found, and this Court did not find otherwise, that none of the nine defendants except three, Standard Oil Company of California, General Motors Corporation and Firestone Tire and Rubber Company, were inhabitants of, or were found in, or transacted any business in the Southern District of California (R. 220). Accordingly, none of the defendants, except these three, were subject to "personal jurisdiction" within the meaning of Section 12 of the Clayton Act, reading as follows:

"That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found."

Only the three defendants named above, who were inhabitants of, or who were found in, or who transacted business in, the Southern District of California, could have been served with process in any district "of which it is an inhabitant, or wherever it may be found." *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 466, 467 (1944).

(d) National and five of the other defendants could not have been served with process under Section 12 and the only other possible source of jurisdiction over these six defendants would be Section 5 of the Sherman Act. That section reads as follows:

"Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof."

Section 5 confers discretionary power on a district court in a civil anti-trust action commenced by the Government to allow additional defendants to be brought into the action only if the Court determines that "the ends of justice" so require. As Mr. Justice Jackson pointed out, before the Government "can bring in other parties than those properly served in the district, i. e., those 'inhabitant,' 'transacting business,' or 'found' there, it must be made to appear to the court that the ends of justice require that they be brought before the court, in which case they may be summoned from any district." In this case it is evident from the lower court's decision that if the Government had applied for an order under that section bringing in National and the five other defendants, who do not come within the provisions of Section 12, the application would have been denied as not being in the interests of justice (R. 205). However, the Government did not apply for and never obtained such an order (R. 231) and accordingly the six defendants in question never had an opportunity to and could not have "resisted or contested the order bringing

them into the suit," as Mr. Justice Jackson indicated they might have done if there were such an order.

(e) It is apparent, therefore, that even if a civil anti-trust action commenced by the Government under Section 12 of the Clayton Act cannot be dismissed by a district court upon the ground that such court was not a convenient forum within which to try the case, nevertheless, as Mr. Justice Jackson pointed out, the "same protections" are available to any defendants who do not come within the provisions of Section 12, and who could only be brought into an action commenced under that section by an order under Section 5 obtained only after a finding that "the ends of justice" required that such parties be made defendants.

(f) National and the other five defendants similarly situated did not question the Government's failure to apply for and obtain an order under Section 5 bringing them in as defendants, believing that the same relief available to them under Section 5 could be obtained by a motion to dismiss the complaint. The lower court apparently entertained the same view (R. 205). However, by making a motion to dismiss under the doctrine of "*forum non conveniens*" National has not waived its defense of lack of jurisdiction in the district court based upon the failure of the Government to obtain an order under Section 5. *Orange Theatre Corp. v. Rayhertz Amusement Corp.*, 139 F. 2d 871 (C. C. A. 3, 1944), cert. denied 322 U. S. 740. And National and the other five defendants should not now be precluded from asserting such defense by motion or by answer because of the erroneous finding by this Court that the lower court had acquired "personal jurisdiction" over them. While the Government may apply for an appropriate order under Section 5, the lower court clearly

indicated that it did not believe such an order would, under the facts found by it, be required by "the ends of justice" (R. 205); and the two opinions of this Court supporting a reversal do not suggest that a refusal by the lower court to grant an order under Section 5 would be improper. We respectfully submit, therefore, that this Court should now correct its erroneous finding that the lower court had acquired "personal jurisdiction" of National and the five other defendants similarly situated; and in the interests of orderly procedure, and to forestall the necessity of litigating this question in the lower court, should also reconsider its decision as if the order of the lower court dismissing the action as to National and these five other defendants had been rendered on an application by the government for an order under Section 5.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the judgment of the United States District Court for the Southern District of California be, upon further consideration, affirmed as to the defendant National and the five other defendants similarly situated.

Respectfully submitted,

MARTIN D. JACOBS,
Counsel for National City Lines, Inc.

Certificate of Counsel.

I, MARTIN D. JACOBS, counsel for the above named appellee, National City Lines, Inc., do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

MARTIN D. JACOBS,
Counsel for National City Lines, Inc.

SUPREME COURT OF THE UNITED STATES

No. 544.—OCTOBER TERM, 1947.

The United States of America,
Appellant,

v.

National City Lines, Inc., Amer-
ican City Lines, Inc., Pacific
City Lines, Inc., et al.

Appeal From the Dis-
trict Court of the
United States for the
Southern District of
California.

[June 7, 1948.]

MR. JUSTICE RUTLEDGE delivered the opinion of the Court.

In *United States v. Scophony Corp.*, 333 U. S. —, we recently considered the meaning and effect of § 12 of the Clayton Act,¹ providing for venue and service of process in civil antitrust proceedings against private corporations. This case brings before us another phase of the section's effect in like proceedings. The principal question, and the only one we find it necessary to consider, is whether the choice of forums given to the plaintiff by § 12 is subject to qualification by judicial application of the doctrine of *forum non conveniens*.

¹ "Sec. 12. That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found." 38 Stat. 736, 15 U. S. C. § 22.

The suit was brought by the United States against nine corporations¹ for alleged violation of §§ 1 and 2 of the Sherman Act. 26 Stat. 209, 15 U. S. C. §§ 1, 2. The basic charge is that the appellees conspired to acquire control of local transportation companies in numerous cities located in widely different parts of the United States,² and to restrain and monopolize interstate commerce in motorbuses, petroleum supplies, tires and tubes sold to those companies, contrary to the Act's prohibitions.³ Injunctive and other relief of an equitable nature was sought.⁴

The appellees filed various motions, including the one involved in this appeal. It sought dismissal of the com-

¹ These, with the states of their incorporation and their principal places of business are as follows:

<i>Corporation</i>	<i>State of incorporation</i>	<i>Principal place of business</i>
National City Lines, Inc.	Delaware	Chicago
American City Lines, Inc.	"	"
Pacific City Lines, Inc.	"	Oakland, Calif.
Standard Oil Co. of California	"	San Francisco
Federal Engineering Corp.	California	"
Phillips Petroleum Co.	Delaware	Bartlesville, Okla.
General Motors Corp.	"	Detroit, Mich.
Firestone Tire & Rubber Co.	Ohio	Akron, Ohio
Mack Manufacturing Corp.	Delaware	New York

² Forty-four cities in sixteen states are included. The states are as widely scattered as California, Florida, Maryland, Michigan, Nebraska, Texas and Washington. The larger local transportation systems include those of Baltimore, St. Louis, Salt Lake City, Los Angeles and Oakland. The largest concentrations of smaller systems are in Illinois, with eleven cities; California with nine (excluding Los Angeles); and Michigan with four. The local operating companies were not named as parties defendant.

⁴ The appellee companies fall into two groups. The largest, which may be called the supplier group, includes the six last named in note 2 above. Except Federal, they are engaged in producing and

plaint on the ground that the District Court for the Southern District of California was not a convenient forum for the trial. This motion was supported by a showing not only of inconvenience to the defendants of trial in the California district, but also that the District Court for the Northern District of Illinois, Eastern Division (Chicago), would be the most convenient forum for them. The showing was by affidavits, executed by officers, attorneys and employees of the corporate defendants.

distributing the commodities purchased by the local operating companies, the sale of which is charged to be monopolized and restrained. Federal is a wholly owned subsidiary of Standard, engaged in managing investments for Standard.

The other group, including the first three companies listed in note 2, is collectively called City Lines. National is a holding company with operations directed from Chicago. American and Pacific are its subsidiaries. The three own, control or have substantial interests in the operating companies.

The complaint charges that the supplier appellees furnish capital to the City Lines for acquiring control of the local operating systems, upon the understanding that the City Lines cause all requirements of the local systems in busses, petroleum products, tires and tubes to be purchased from the supplier appellees and no other sellers.

⁵ The prayer of the complaint sought complete divestiture of the supplier appellees' financial interests in City Lines; partial divestiture of City Lines' interests in local transportation companies; voiding of existing contracts between the supplier appellees and City Lines; and an injunction against purchases from those suppliers by City Lines or their operating companies, except in accordance with a competitive bidding plan to be included in the decree.

⁶ In highly attenuated summary the showing was that the transactions creating the core of the charged conspiracy took place chiefly in or near Chicago; appellees' chief witnesses and documentary evidence are located there; their transportation to Los Angeles and extended presence there will cause great hardship; no defendant "resides" or has its principal office or place of business in the California district (cf. note 2); and two trials in distant cities, see text *infra* at note 41, will greatly magnify the hardship. See 7 F. R. D. 456, 465.

4 U. S. v. NATIONAL CITY LINES.

Counteraffidavits were filed in opposition on behalf of the Government.⁷

After oral argument, the District Court filed findings of fact and conclusions of law together with a written opinion, substantially accepting appellees' showing and sustaining the motion. 7 F. R. D. 456. Accordingly it entered judgment dismissing the complaint, but without prejudice to the institution of a similar suit against the named defendants "in a more appropriate and convenient forum." This decision is brought to us for review on direct appeal pursuant to the statutes applicable in such cases.⁸

It is not disputed that the District Court has jurisdiction in the basic sense of power to hear and determine the cause or that it has venue within the provisions of § 12.⁹ Nor can it be questioned that any of the defendants can be brought personally within that court's jurisdiction by service of process made in accordance with the provisions of either § 12, or those of § 5 of the Sherman Act.¹⁰ The only question presented concerning the

⁷ The Government stresses that three of the five supplier defendants transact business and are "found," cf. note 1, in the California district; the volume of sales allegedly restrained is much greater on the Pacific Coast than elsewhere; substantial portions of the evidence, oral and documentary, will be produced from California, etc. Cf. 7 F. R. D. 456, 465.

⁸ 32 Stat. 823, 36 Stat. 1167, 15 U. S. C. § 29; 43 Stat. 938, 28 U. S. C. § 345.

⁹ It is conceded that three of the defendants, Standard, General Motors, and Firestone, transact business within the Southern District of California. The others apparently were served either pursuant to the concluding clause of § 12 or pursuant to § 5 of the Sherman Act. See note 10 *infra*.

¹⁰ "Sec 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside

court's power is whether, having jurisdiction and venue of the cause and personal jurisdiction of the defendants, the court also was authorized to decline to exercise its jurisdiction upon finding, without abuse of discretion, that the forum was not a convenient one within the scope of the non-statutory doctrine commonly, though not too accurately, labeled *forum non conveniens*.

It would serve no useful purpose to review in detail the reasoning or the authorities upon which the District Court ruled the doctrine applicable in such cases as this, or therefore the further groundings upon which it proceeded in holding the forum inconvenient. For the view has prevailed without qualification during the life of § 12, thirty-four years, that the choice of venues expressly given to the plaintiff is not to be qualified by any power of a court having venue under any of the section's alternatives to decline to exercise the jurisdiction conferred. None of the decisions on which the District Court relied suggested, much less decided, that such a power exists. This therefore is a case of first impression, seeking departure from long-established practice. Moreover, the analogies drawn from other types of cases in which the doctrine has been applied¹¹ cannot survive in the face of the section's explicit terms and the patent intent of Congress in enacting it.

In the *Scophony* case we gave attention to the history of § 12, which as there related is as pertinent to the question now presented as it was to the issues then under

in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof." 26 Stat. 210, 15 U. S. C. § 5. Section 4 of the Sherman Act (i. e., "this act") refers specifically to civil actions brought by the Government. Cf. *Eastman Co. v. Southern Photo Co.*, 273 U. S. 359, 374.

¹¹ See note 46 *infra*.

consideration.¹² Reference to the *Scophony* opinion, Part I, 333 U. S. at — —, will avoid the necessity for repeating the history here *in extenso*. But its present applicability will be accentuated by recalling that we reaffirmed the ruling in *Eastman Co. v. Southern Photo Co.*, 273 U. S. 359, namely, that § 12 of the Clayton Act had enlarged the venue provision of § 7 of the Sherman Act, with the intent and effect to give the plaintiff the right to bring antitrust proceedings not only in the districts where the corporate defendant "resides or is found," as § 7 had authorized, but also "in any district wherein it . . . transacts business."¹³

In the *Eastman* case, as the *Scophony* opinion emphasized, the Court had rejected the argument that the addition of "or transacts business" was no more than a redundant reformulation of "is found"; instead it gave the added words broader and less technical meaning than "is found" had acquired under prior decisions.¹⁴ This was done, as the *Eastman* opinion stated, because accepting the contrary view would have rendered the addition meaningless and defeated the plain remedial purpose of § 12. 273 U. S. at 373. That section, the Court held, supplemented "the remedial provision of the Anti-Trust Act for the redress of injuries resulting from illegal restraints upon interstate trade, by relieving the injured person from the necessity of resorting for the redress of wrongs committed by a non-resident corporation, to a district, how-

¹² In the *Scophony* case we were concerned, not as here with any question of discretion to decline the exercise of jurisdiction, but in the presently pertinent part with the tests of venue prescribed by the section and whether, on the facts presented, those tests had been met, so as to establish venue in the district of suit.

¹³ See note 1.

¹⁴ See *United States v. Scophony Corp.*, 333 U. S. —, Part I at — —.

ever distant, in which it resides or may be 'found'—often an insuperable obstacle—and enabling him to institute the suit in a district, frequently that of his own residence, in which the corporation in fact transacts business, and bring it before the court by the service of process in a district in which it resides or may be 'found.'” (Emphasis added.) 273 U. S. at 373-374.

The *Scophony* opinion reaffirmed this view: “Thus, by substituting practical, business conceptions for the previous hair-splitting legal technicalities encrusted upon the ‘found’—‘present’—‘carrying-on-business’ sequence, the Court yielded to and made effective Congress’ remedial purpose. Thereby it relieved persons injured through corporate violations of the antitrust laws from the ‘often insuperable obstacle’ of resorting to distant forums for redress of wrongs done in the places of their business or residence. A foreign corporation no longer could come to a district, perpetrate there the injuries outlawed, and then by retreating or even without retreating to its headquarters defeat or delay the retribution due.” 333 U. S. at — (p. 13, slip opinion).

These conclusions concerning the section’s intent and effect are altogether inconsistent with any idea that the defendant corporation can defeat the plaintiff’s choice of venue as given, by asking for and securing dismissal of the suit, either on the ground that the venue selected within the statutory limits is inconvenient for the defendant or that another authorized venue is more convenient for it.

No such discretionary power had been exercised by any court during the twenty years of the Sherman Act’s application prior to the enactment of § 12, under the narrower range of choice afforded by § 7. None had been suggested, and uniform practice had established that the plaintiff’s choice was conclusive, as was true later under § 12 until the deviation in this case.

When therefore Congress came to face the problem of making the nation's antitrust policy more effective through the Clayton Act's provisions, that body was not confronted with any problem of abuse by plaintiffs in selecting venue for antitrust suits; nor was it concerned with any question of providing means by which the defendants in such suits might defeat the plaintiff's choice to serve their own convenience. Congress' concern was quite the opposite. It was to provide broader and more effective relief, both substantively and procedurally, for persons injured by violations of its antitrust policy.¹⁵ Insofar as convenience in bringing suit and conducting trial was involved, the purpose was to make these less inconvenient for plaintiffs or, as was said in the *Eastman* opinion, to remove the "often insuperable obstacle" thrown in their way by the existing venue restrictions.

To have broadened the choice of venue for the reasons which brought about that action, only to have it narrowed again by application of the vague and discretionary power¹⁶ comprehended by *forum non conveniens* would have been incongruous, to say the least. In making

¹⁵ The Clayton Act hardly can be regarded as a statute for the relief of corporate defendants in antitrust proceedings from either procedural or substantive abuses. See Levy, *The Clayton Law—An Imperfect Supplement to the Sherman Law*, 3 Va. L. Rev. 411.

¹⁶ "Wisely, it has not been attempted to catalogue the circumstances which will justify or require either grant or denial of remedy. The doctrine leaves much to the discretion of the court to which plaintiff resorts, and experience has not shown a judicial tendency to renounce one's own jurisdiction so strong as to result in many abuses.

"If the combination and weight of factors requisite to given results are difficult to forecast or state, those to be considered are not difficult to name. An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. . . . The court will weigh relative advantages and obstacles to fair trial." *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, 508.

the change Congress did not authorize plaintiffs to institute civil antitrust suits in the newly specified districts, merely in order to have them transferred back for trial to one of the districts comprehended by § 7. It intended trial to take place in the district specified by the statute and selected by the plaintiff.¹⁷

This conclusion is supported as strongly by the history of the legislative proceedings relating to the enactment of § 12 as by the foregoing judicial constructions. Section 7 of the Sherman Act had limited venue, as we have noted, to districts in which the defendant "resides or is found." As originally introduced in the House, two sections of the Clayton Act, §§ 4 (then § 5) and 12 (then § 10)¹⁸ perpetuated those provisions.¹⁹ During discussion on the floor, however, various Representatives demanded broader choice of venue for plaintiffs. The de-

¹⁷ The *Eastman* opinion referred to the disadvantages suffered by plaintiffs under § 7 of the Sherman Act who were injured where they resided or conducted their business, only to be forced to seek out the wrongdoing company in a distant forum to secure venue and service of process, and therefore also to transport witnesses and incur other disadvantages in trial. 273 U. S. 359, 373-374. Likewise the legislative discussions hereinafter cited uniformly treat the problem as one involving both instituting the suit and trying it. There is no hint that it was contemplated the two phases of the litigation might be separated and conducted in different places. See, e. g., notes 31 and 32 *infra*.

¹⁸ Section 12 began as § 10, became § 11 in the Senate and finally § 12 in conference. Similarly, § 4 began as § 5, changed first to § 3, and finally to § 4. Section 4 provides for recovery of treble damages in private antitrust proceedings and its venue provisions apply in terms only to such suits. Section 12 applies to "any suit, action, or proceeding under the antitrust laws against a corporation." This literally is broad enough to include the suits comprehended by § 4.

¹⁹ The original wording of the two sections in respect to venue was slightly different but the substance was identical, both following the preëxisting provisions of § 7 of the Sherman Act.

mand related to both sections, and the discussion went forward now with reference to one, now the other, now both.

The basic aim of the advocates of change was to give the plaintiff the right to bring suit and have it tried in the district where the defendant had committed violations of the Act and inflicted the forbidden injuries.²⁰ At first they were not much concerned with the exact formulation of the language to accomplish this, several formulas being proposed from time to time.²¹ But they were convinced that restricting the choice of venue to districts in which the defendant "resides or is found" was not adequate to assure that the suit could be brought where the cause of action arose, and therefore insisted on change in order to assure that result.²²

²⁰ *E. g.*, Representative Dickinson urged that the language "be extended sufficiently to reach every contingency, so that these concerns may be sued in that jurisdiction where they commit the wrong, where the acts complained of may be committed, where the officers, agents, or employees, acting for their master corporation, may be found setting aside the law, and where the witnesses are easily obtainable" 51 Cong. Rec. 9190. Later he stated that he wanted to "give the widest liberty of bringing suits where the damage is done and where the action arose." 51 Cong. Rec. 9417.

Representative Sumners spoke to the same effect: "Mr. Chairman, I believe this matter of venue is one of the most important connected with the whole subject of antitrust legislation. . . . The philosophy of legislation with regard to this subject should give the venue at the place wherein the cause of action arises." *Id.* 9467. See also *id.* 9414, 9415, 9608.

²¹ "Why not at the end of the section, after the word 'found,' add other words, such as 'doing business, or violating the provisions of this law, or wherever it may do business or where its agents, officers, or employees may be found,' or other appropriate language. A dozen suggestions may be made in the way of amendment." *Id.* 9190. See also *id.* 9414-9417, 9466, 9607, 9663, 9682.

²² "Mr. SCOTT. What is the gentleman's understanding of the word 'found'; what is its import as used in this section?"

"Mr. DICKINSON. I understand that there is some decision by some court that I am not very familiar with that may possibly cover

The committee sponsoring the bill had no objection to this purpose; indeed its members expressly approved it.²² But at first they opposed any amendment, because they thought the object fully achieved by the words "is found."²³ Over this difference the discussion went for-

the very thought suggested by my proposed amendment. I do not believe that it meets the situation, and if there be any doubt about it, in order that the Government may prosecute successfully and institute suits and actions and have trials the language ought to be clear and definite, and so plain that he who runs may read; so that there can not be two constructions." *Id.* 9415.

"Mr. CULLOP. May I suggest . . . that every suit which has arisen under the Sherman antitrust law has been brought at the home of the corporation itself, or at its principal place of business, and therefore there was no occasion to construe this language, 'is found,' which is ambiguous and uncertain. If you are to construe 'is found,' you will have to construe that as the place of the residence of the corporation, because it is not migratory. You can not get service upon some person traveling throughout the country and hold your jurisdiction throughout that territory.

"Mr. CARLIN. Why should not the suit be brought in the habitat of the corporation? We have been successful so far in that matter.

"Mr. CULLOP. In this case for the very best reason, I think. The gentleman from Virginia [Mr. CARLIN] now has disclosed the purpose of this language, and that is why I am combating it, and for the best of reasons, I think. I do not want to make a resident of California come to Trenton, N. J., to bring a suit for violation of this law, but I want him to sue at home in the jurisdiction where the cause of action arose." *Id.* 9416. See also *id.* 9466-9467, 9607-9608, 9663-9664.

²² *E. g.* Representative Floyd stated that the provisions were designed "to give the Government the widest possible scope in getting service in these cases, and the provision is right as it is written and ought not to be changed." *Id.* 9416.

²³ "Mr. FLOYD. . . . The very broadest language that can be used in a statute of this kind conferring jurisdiction is to give the jurisdiction where the corporation resides or is found." *Id.* 9415. And "I think the provisions relating to service properly drafted as they appear in the bill, and that the proposed amendment and others suggested in the debate would narrow the scope of the provisions as drawn." *Id.* 9417. And see *id.* 9608.

ward, as well as over various formulations of the proposed addition. Some were broader than was necessary to achieve the primary aim.²⁵ Indeed some were so broad that committee members thought their inclusion would jeopardize passage of the entire bill.²⁶

To avoid this result and to satisfy those who insisted on amendment, the committee yielded and proposed a substitute amendment for one of those offered from the floor relating to § 4. The committee substitute added the words "or has an agent" after "is found" in the original committee version. 51 Cong. Rec. 9466. This amendment passed the House and later the Senate unchanged. *Id.* 9467. Section 4 thus became law in its present form, for the limited class of cases covered by its terms. Cf. note 18.

Since however the amendment affected only § 4, the problem concerning § 12 remained unresolved. Suggestions therefore were made at once for amending § 12 to bring it into conformity with § 4. *Id.* 9467, 9607. Although other proposals were again put forward, *id.* 9607, the conforming amendment was adopted by the House. *Ibid.*

After the bill passed the House, it was referred to the Senate Committee on the Judiciary. That committee reported it out with § 12²⁷ altered by the substitution of "or transacts business" in place of "or has an agent,"

²⁵ See, e. g., Representative Cullop's suggestion to confer jurisdiction on state courts without a right of removal to the federal courts. *Id.* 9662-9664.

²⁶ In opposing the suggestion to confer jurisdiction on the state courts, Representative Floyd argued, *inter alia*, that "any friend of this legislation, as I am sure the gentleman from Indiana [Representative Cullop] is, ought not to aid those who are fighting this legislation—the trusts and the combines of this country—by loading it down with questionable amendments that will tend to defeat it and destroy it in the end." *Id.* 9663.

but leaving the latter clause in § 4 untouched.²⁷ The Senate committee reports and the debates in that body throw little light upon the reasons underlying the committee's alteration of § 12 and its failure to alter § 4 so as to make them uniform, except for the general statement that § 12 as reported "concerns venue or the place where suits to enforce the antitrust laws against corporations may be brought and liberalizes the Sherman law to some extent upon this subject."²⁸ The bill finally passed the Senate with § 12 substantially as it was reported by the Committee on the Judiciary,²⁹ and went to conference in that form. In conference the Senate version of § 12 prevailed over that of the House, and the bill was so enacted.³⁰

The short outcome was that Congress expanded the venue provisions of the Sherman Act, § 7, in two ways, viz: (1) by adding to "resides or is found," in § 4 of the Clayton Act, the words "or has an agent"; (2) in § 12 by adding "or transacts business." Thus strict uniformity in the two sections' venue provisions was not achieved. But whatever their differences may be, each addition was designed to aid plaintiffs by giving them a wider choice of venues, and thereby to secure a more effective, because more convenient, enforcement of antitrust prohibitions.

²⁷ In place of the House amendment to § 12 of "or has an agent," the Senate committee substituted this language: "or transacts any business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found." Sen. Rep. No. 698, 63d Cong., 2d Sess. 73.

²⁸ 51 Cong. Rec. 14214. See *id.* 14596, 15943, 16048-16052.

²⁹ An amendment providing for stockholder suits against officers of a corporation violating the antitrust laws was added by the Senate but deleted in conference. See the references cited in note 28.

³⁰ Sen. Doc. No. 583, 63d Cong., 2d Sess. 9. Sen. Doc. No. 584, 63d Cong., 2d Sess. 18.

Moreover the discussions in Congress, particularly in the House, disclose no other thought than that the choice of forums was given as a matter of right, not as one limited by judicial discretion. There was, in fact, common agreement upon this among both the advocates and the opponents of amendment.²¹ No one suggested that the courts would have discretionary power to decline to exercise the jurisdiction conferred. But since it was universally agreed that the choice of venue, to whatever extent it might be conferred, was to be given as a matter of right, several of the broader amendments were opposed and defeated as going too far.²²

Congress therefore was not indifferent to possibilities of abuse involved in the various proposals for change. Exactly the opposite was true. For the broader pro-

²¹ See notes 25, 26. The following are examples of the discussion on the plaintiff's right to choose: "Mr. DICKINSON. . . . I do not ask to strike out any language of the committee, but simply to add to it, to make clear and definite and certain so that any person and any corporation may be sued not only where it has its residence as a corporation or individual, but that it can be sued wherever it is found doing business and the cause of action may arise.

"Mr. STEPHENS of TEXAS. . . . I thoroughly agree" 51 Cong. Rec. 9414.

"I will say to my friend from Wisconsin [Mr. Stafford] that we are liberalizing the procedure in the courts in order to give the individual who is damaged the right to get his damages anywhere—anywhere you can catch the offender, as is suggested by a friend sitting near by." The quoted language is that of Representative Webb. 51 Cong. Rec. 16274. See *id.* 9467, 9607; also note 32.

²² "Mr. SCOTT. I could not conceive that anything would deprive the plaintiff of his right to choose the place of trial if he so desired, either in the district where found or where the corporation resides." *Id.* 9417.

"Mr. SCOTT. . . . The amendment enlarges the present interpretation of the word 'found' as applied to the corporate jurisdiction, and permits suit to be brought, *with absolute discretion on the part of the plaintiff*, in any district in which the defendant may have an agent, without defining the character of that agent." (Emphasis added.) *Id.* 9467.

posals were not rejected because they gave the plaintiff the choice. They were rejected because the choice given was too wide, giving plaintiffs the power to bring suit and force trial in districts far removed from the places where the company was incorporated, had its headquarters, or carried on its business. In adopting § 12 Congress was not willing to give plaintiffs free rein to haul defendants hither and yon at their caprice. 51 Cong. Rec. 9466, 9467. But neither was it willing to allow defendants to hamper or defeat effective enforcement by claiming immunity to suit in the districts where by a course of conduct they had violated the Act with the resulting outlawed consequences. In framing § 12 to include those districts at the plaintiffs' election, Congress thus had in mind not only their convenience but also the defendant company's inconvenience, and fixed the limits within which each could claim advantage in venue and beyond which neither could seek it. Moreover, in § 12, though not in § 4, the right of choice conferred was given designedly to the Government as well as to private suitors.²³

In the face of this history we cannot say that room was left for judicial discretion to apply the doctrine of *forum non conveniens* so as to deprive the plaintiff of the choice given by the section. That result, as other courts have concluded, would be utterly inconsistent with the purpose of Congress in conferring the broader range of choice. *Tivoli Realty v. Interstate Circuit* (C. C. A. 5th, March 18, 1948); *Ferguson v. Ford Motor Co.* (U. S. D. C., S. D. N. Y., April 21, 1948).

In this view of Congress' action, numerous considerations of policy urged by the appellees as supporting the discretionary power's existence and applicability become

²³ Representative Floyd remarked that the committee "language was used to make this section conform to the existing law and enable him [the Attorney General] to have greater liberty in bringing these suits." *Id.* 9415. And see note 23 *supra*.

irrelevant. Congress' mandate regarding venue and the exercise of jurisdiction is binding upon the federal courts. Const. Art. III, § 2. Our general power to supervise the administration of justice in the federal courts, cf. *McNabb v. United States*, 318 U. S. 332, does not extend to disregarding a validly enacted and applicable statute or permitting departure from it, even in such matters as venue.

It is true that the appellees made a strong showing of inconvenience, albeit by interested persons, when that matter is considered on their presentation alone. On the other hand, the Government advanced strong reasons, apart from the question of power, for not applying the doctrine.²⁴ But in the view we take of § 12, we need not consider whether the appellees' showing on the facts sufficiently outweighed that of the Government to justify dismissal.²⁵

Two important policy considerations were advanced by the Government, however, which not only bear strongly upon that question but affect the question of power, if Congress had not concluded it. The first is that permitting the application of *forum non conveniens* to anti-trust cases inevitably would lengthen litigation already overextended in the time required for its final disposition, and thus would violate Congress' declared policy of expediting this type of litigation.²⁶

²⁴ See notes 6 and 7.

²⁵ It should be noted, however, that "the mere balance of convenience" in favor of defendants would be insufficient to justify application of the doctrine of *forum non conveniens*. This has been true since the earliest Scottish and English cases applying the doctrine, although the test has been variously formulated. For example, dismissal has been authorized if suit is "vexatious and oppressive and an abuse of the process of the Court," or "only brought to annoy the defendant." See *Laucher*, *The Inconvenient Federal Forum*, 60 Harv. L. Rev. 908, 909-911. Cf. also note 16 *supra*.

²⁶ Congress has provided that the trial of these actions may, upon request of the Attorney General, "be given precedence over others."

The argument has merit to support the conclusion we have reached upon the statute. Antitrust suits, even with all the expedition afforded them, are notoriously though often perhaps unavoidably long drawn out. The more complex and important cases seldom require less than three to five years to conclude," except possibly where consent decrees are entered. Often the time necessary or taken is much longer. To inject into this overlengthened procedure what would amount to an additional preliminary trial and review upon the convenience of the forum could not but add approximately another year or longer to the time essential for disposing of the cases, indeed for reaching the merits." Although some instances of inconvenience to defendants will arise from the absence of discretionary power, that will be unavoidably true in almost any event. And it may well be doubted

and in every way expedited, and be assigned for hearing at the earliest practicable day" 32 Stat. 822, 15 U. S. C. § 28. The policy of expediting final decision of these cases is further implemented by authorizing direct appeals to this Court. 32 Stat. 823, 15 U. S. C. § 29.

"See, e. g., *Schine v. United States*, 334 U. S. —; *United States v. Griffith*, 334 U. S. —, which were instituted in 1939 and have recently been remanded for further proceedings in the trial courts. And the *Eastman* case, 273 U. S. 359, though begun in 1915, was not decided by this Court until 1927.

"In this case, although the proceedings have advanced without unwarranted delay at any one stage, more than a year has been consumed solely on the issue of *forum non conveniens*. The complaint was filed on April 10, 1947. Motions to dismiss, supported by affidavits to show inconvenience, were filed in August and September. The trial court made findings and entered judgment of dismissal on October 15 and allowed an appeal on December 3. The Government filed its statement as to jurisdiction in this Court on January 20, 1948; we noted probable jurisdiction on February 9, heard oral argument on April 28, and today we resolve the issue. But for the intervention of the motions, the consequent dismissal and appeal, the case with appropriate expedition might now be well on the way to final decision on the merits.

that the sum total of inconvenience and injustice resulting will be as great as would follow, for both private plaintiffs and the public, from allowing the inescapable delay incident to the exercise of such a discretionary power. For once the power were found to exist, it is more than likely that injection of the issue would become a common incident of antitrust suits, and create the disadvantage of delay for all concerned.

This consideration is reinforced by another, namely, the difficulty of applying the doctrine in cases such as this, in which the violations charged are nationwide or nearly so in scope and effect, and the defendants are numerous companies widely scattered in the location of their places of incorporation, principal offices, and places of carrying on business and participating in the scheme. In such a case dismissal in one authorized district cannot reinstate or transfer the cause to another. Nor can the court, within the limits of the doctrine, specify the district in which the case shall be reinstituted and tried. It can only terminate the pending proceeding, as was done here, without prejudice to commencement of a like suit "in a more appropriate or convenient forum," with whatever consequences may follow from having to begin all over again.

Further, when that is done, the result well may be in some instances to have the action commenced again, only to precipitate the same issue and consequent delay in the second forum. Conceivably this could occur from forum to forum in succession, depending upon the number of corporations named as defendants and the variety, proximity, and degree of concentration of the locations of their principal offices, places of business, and the relative advantages of other available forums for the variously situated defendants. Accordingly, in an unknown number of such cases the practical result well might be to establish a merry-go-round of litigation upon the issue, which could be used to defer indefinitely consider-

ation of the merits. The very possibility of such a tactic would greatly hamper the institution as well as the conclusion of antitrust proceedings. Indeed, for cases of this complex type, the uncertainty concerning the outcome of an effort to apply the doctrine might go far toward defeating the Act's effective application to the most serious and widespread offenses and offenders.*

Further, even if it is taken that the appellees' activities constituting the core of the violations charged were as fully concentrated in or near the Illinois district as appellees claim, such a concentration might or might not exist in other like proceedings. And in the latter event the problem of selecting the appropriate forum well might become a highly uncertain and difficult one.**

The appellees also strongly urge two other considerations which deserve mention. One is that a criminal

* In this case these possibilities have been discounted, largely upon the basis that the appellees had joined in stipulating that all regarded the Illinois forum "as the proper forum for the above action" and that, in case of dismissal in the California district and filing of a like suit in the Illinois district, the defendants would not move for dismissal of the new suit on the ground of *forum non conveniens*. The stipulation perhaps would be effective in this case to avoid the complexities of repeated motions if suit were reinstituted in Chicago, but not if the Government should select any of the other venues open to it under § 12.

In any event the stipulation is wholly irrelevant to any question of the general effect of the doctrine's applicability upon antitrust proceedings. For once that were established, no defendant or group of defendants in subsequent cases would be bound, or perhaps likely, to execute such a stipulation.

** As the Government points out, in practically all of the more complex types of antitrust proceedings, the principal defendants are corporations doing a multistate business, and the combination or conspiracy charged seldom has a defined locus. In such situations, it is generally true that, whatever the forum chosen by the plaintiff, it will be inconvenient for some of the defendants and often for most of them. When there is such diffusion of possible venue, that fact of course would be basis for declining to apply the doctrine of *forum non conveniens*, even if applicable. It is also

prosecution against the appellees (together with seven individuals, officers of some of them), pending in the California district simultaneously with this cause and growing out of substantially the same transactions, had been transferred to the Illinois district shortly before the District Court entered its judgment of dismissal.⁴¹ The transfer was ordered pursuant to Rule 21 (b) of the Federal Rules of Criminal Procedure.⁴² That action was taken after

reason for declining to accept the view that the doctrine was intended to be applicable.

Thus, in this case, all but two of the appellees were incorporated and hence "reside" in Delaware. None are incorporated in Illinois, and only two have their principal places of business or headquarters in Chicago. The invariable practice for fifty-four years, first under § 7, then under § 12, has been that suit may "maintained and trial had at the plaintiff's election where the corporation "resides" or where it "is found." But if this suit had been brought in Delaware or at any of the principal places of business except Chicago, under the application of *forum non conveniens* made here the trial could not have proceeded in any of those other places. Cf. *Tivoli Realty v. Interstate Circuit* (C. C. A. 5th, March 18, 1948). The statute, § 12, does not require trial to be had where the agreement in conspiracy takes place. Locus of coming to agreement is not the gist of the offenses proscribed.

⁴¹ The indictment was returned on April 9, 1947; on August 14, 1947, defendants' motion to transfer the cause was granted. The civil complaint was filed on April 10, 1947, and dismissed on October 15, 1947.

⁴² Rule 21 (b) provides: "Offense Committed in Two or More Districts or Divisions. The court upon motion of the defendant shall transfer the proceeding as to him to another district or division, if it appears from the indictment or information or from a bill of particulars that the offense was committed in more than one district or division and if the court is satisfied that in the interest of justice the proceeding should be transferred to another district or division in which the commission of the offense is charged." Cf. note 43 and text. In addition to the questions there reserved, we express no opinion on whether Rule 21 (b) applies to criminal antitrust prosecutions.

The Federal Rules of Criminal Procedure became effective March 21, 1946. It would be stretching very far the idea of utilizing legis-

the District Court had made findings of fact and conclusions of law founded upon and substantially adopting the appellees' showing, which was practically identical with their showing in this case. Consequently, as the cases now stand, the criminal cause is to be tried in the Illinois district while this civil suit founded upon practically the same transactions and affecting the same corporate defendants is to be tried in the California district.

Great emphasis is placed upon this as an impelling reason for holding *forum non conveniens* applicable here, and then sustaining the order of dismissal under that doctrine and the District Court's findings. But, for the reasons above stated, we think the matter has been concluded by the terms and intent of § 12. Moreover, it is at least doubtful whether the Government had a right to appeal from the order of transfer in the criminal case.⁴³ In any event, the validity of that order is not before us. We therefore express no opinion upon either of those questions. But the fact that we cannot do so goes far to nullify the effect of appellee's argument of hardship arising from the transfer. For that argument comes down, in the peculiar circumstances, to one that because the District Court on appellees' application has transferred the criminal cause by a dubiously reviewable order, perforce of that action it should also dismiss this civil cause and we should sustain the dismissal.

In practical effect the outcome of accepting such an argument as ground for sustaining both the power and the dismissal would be to make Rule 21 (b) controlling in

lative history, if criminal rules adopted twenty-two years after a civil statute was enacted were given any significance upon the meaning or effect of the statute.

⁴³ The precise point apparently has not arisen since the adoption of Rule 21 (b), but there would seem to be no statutory basis for appeal from an order of this type. See 18 U. S. C. § 682. See also *Semel v. United States*, 158 F. 2d 231, 232.

civil as well as criminal cases involving the same transactions and parties, thus overriding § 12, and at the same time depriving the plaintiff in the civil cause of anything more than perfunctory review of the District Court's order of dismissal.⁴⁴

Hardly can it be taken that Rule 21 (b) was intended so to override the provisions of § 12, to confer power on the District Courts to do so, or to nullify the plaintiff's right of appeal from an order depriving it of the statutory privilege of choosing the venue. Yet these would be the practical results, if the consideration that the court has ordered transfer of the criminal case is to be controlling or highly influential, as it undoubtedly would be in most cases, in applying the doctrine of *forum non conveniens* in the civil cause. If matters of policy were material, these possible consequences would add force to the view that the doctrine is not applicable.

Moreover, if the transfer should result in hardship to the appellees,⁴⁵ insofar as the hardship arises from that

⁴⁴ All that defendants would have to do, in any practical sense, in order to secure dismissal, would be to convince the District Court that transfer of the criminal cause should be made, and then demonstrate the self-evident fact that trial of the two causes in different districts would be inconvenient.

⁴⁵ In view of our decision in this civil case, there would be nothing to prevent appellees from making a motion under Rule 21 (b) of the Criminal Rules to have the criminal cause retransferred to the Southern District of California, if in the changed outlook arising from this decision that should be their pleasure.

The Government argues further that as a practical matter there is little likelihood that appellees will be forced to defend both actions. For its distinctly footnote value we quote from its brief:

"When the Government believes that there has been a violation of the Sherman Act, it sometimes seeks corrective relief by way of a civil suit filed after, or simultaneous'y with, the return of a criminal indictment, but when companion proceedings are thus instituted it is only rarely that both are ultimately brought to trial. If it is held on the present appeal that dismissal of the civil complaint was

cause it is one which was avoidable by them and will be incurred as a result of their own action in applying for it. That they have voluntarily incurred it is no good reason for depriving the plaintiff of its statutory right of choice under the terms and policy of § 12 in the entirely distinct civil suit.

Finally, both appellees and the District Court have placed much emphasis upon this Court's recent decisions applying the doctrine of *forum non conveniens* and in some instances extending the scope of its application.⁴⁴ Whatever may be the scope of its previous application or of its appropriate extension, the doctrine is not a principle of universal applicability, as those decisions uniformly recognize. At least one invariable, limiting principle may be stated. It is that whenever Congress has vested courts with jurisdiction to hear and determine causes and has invested complaining litigants with a right of choice among them which is inconsistent with the exercise by those courts of discretionary power to defeat the choice so made, the doctrine can have no effect. *Baltimore & O. R. Co. v. Kepner*, 314 U. S. 44; *Miles v. Illinois Central R. Co.*, 315 U. S. 698. The question whether such a right has been given is usually the crux of the problem. It is

erroneous, the Government will not seek to bring the criminal and the civil cases to trial simultaneously and, in any event, it is highly unlikely that it will be found necessary to bring both cases to trial.

"If the Government obtains a decree in a civil suit, the defendants in a related criminal case usually file pleas of *nolo contendere*. If the criminal case is tried first and verdicts of guilty are returned, there is nothing left for trial in the civil case except the question of relief (*Local 167 v. United States*, 291 U. S. 293, 298-299), and the parties are customarily able to reach an agreement on this question and dispose of the civil case by the entry of a consent decree."

⁴⁴ *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501; *Koster v. Lumbermens Mutual Co.*, 330 U. S. 518. See also *Baltimore & Ohio R. Co. v. Kepner*, 314 U. S. 44; *Miles v. Illinois Central R. Co.*, 315 U. S. 698; *Williams v. Green Bay & W. R. Co.*, 326 U. S. 549.

one not to be answered by such indecisive inquiries as whether the venue or jurisdictional statute is labeled a "special" or a "general" one. Nor is it to be determined merely by the court's view that applicability of the doctrine would serve the ends of justice in the particular case. It is rather to be decided, upon consideration of all the relevant materials, by whether the legislative purpose and the effect of the language used to achieve it were to vest the power of choice in the plaintiff or to confer power upon the courts to qualify his selection.

This is a case in which the pertinent factors make clear that the courts were given no such power. Accordingly the judgment is

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 544.—OCTOBER TERM, 1947.

The United States of America,
Appellant,

v.

National City Lines, Inc., Amer-
ican City Lines, Inc., Pacific
City Lines, Inc., et al.

Appeal From the Dis-
trict Court of the
United States for the
Southern District of
California.

[June 7, 1948.]

MR. JUSTICE JACKSON, concurring.

I agree with the conclusion of the Court but arrive at it by a shorter and different route.

We have just had occasion to review and to decide, by a divided Court, cases involving the doctrine of *forum non conveniens*. *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501; *Koster v. Lumbermen's Mutual Casualty Co.*, 330 U. S. 518. We there held that, in cases where the plaintiff was in court in an ordinary civil suit only by reason of the venue statutes that apply generally, the court could exercise discretion in dismissing complaints to prevent imposition on its jurisdiction if the circumstances of the particular case showed an abuse of the option vested in plaintiff by the general venue statutes. But we also pointed out that, where the choice of forum was authorized by a special venue statute, this discretion to dismiss would not be implied. The distinctions there made between general and special venue statutes may have been overly simple from the viewpoint of the dialectician. But as working tools of everyday craftsmen they do serve to point out a difference that I think governs here.

Congress made some rather unusual provisions as to venue in antitrust cases. Had it stopped there, it might have been permissible for the courts to devise their own

limitations to prevent abuse of their process. But Congress did not stop there. Not only once but three times it has enacted almost identical provisions which check any abuse or oppression from compelling defendants to defend in places remote from their habitat. 15 U. S. C. § 5 (1890), 15 U. S. C. § 10 (1894), 15 U. S. C. § 25 (1914).

The scheme of the statutes, as I see it, is that the Attorney General may lay the venue in any district where he may properly serve one or more of his defendants. He may go ahead with his action against them, whether he is allowed to bring in others or not. Before he can bring in other parties than those properly served in the district, i. e., those "inhabitant," "transacting business," or "found" there, it must be made to appear to the court that the ends of justice require that they be brought before the court, in which case they may be summoned from any district.

Congress has here provided a practice by which any defendant, who has not subjected himself to suit in the district, may obtain the same protections which the *forum non conveniens* doctrine would afford.

In this case, the defendants, who might be entitled to urge the doctrine, have not resisted or contested the order bringing them into the suit. It was by so doing that they could have shown that the ends of justice would not be served by such action. Instead, they desire to submit to being brought in and then use their position to throw the whole case out. This, I think, cannot be done.

The special provision Congress has made, both to establish venue and to protect against its abuse, whether the exact equivalent of *forum non conveniens* or not, seem to me to preclude its application by the courts to this class of cases.

For this reason I concur in the result.

SUPREME COURT OF THE UNITED STATES

No. 544.—OCTOBER TERM, 1947.

The United States of America,
Appellant,

v.

National City Lines, Inc., Amer-
ican City Lines, Inc., Pacific
City Lines, Inc., et al.

Appeal From the Dis-
trict Court of the
United States for the
Southern District of
California.

[June 7, 1948.]

MR. JUSTICE FRANKFURTER, dissenting.

This is an equity suit for violation of §§ 1 and 2 of the Sherman Law brought in the United States District Court for the Southern District of California. The same defendants were indicted in the same court for the same transactions under the criminal provisions of the Sherman Law. That court transferred the criminal proceedings from the Southern District of California to the District Court for the Northern District of Illinois because it was "in the interest of justice" to order the transfer. In doing so, the court below was obedient to Rule 21 (b)¹ of the Federal Rules of Criminal Procedure, formulated by this Court and having the force of law. 327 U. S. 823 *et seq.* With convincing particularity the District

¹ "The court upon motion of the defendant shall transfer the proceeding as to him to another district or division, if it appears from the indictment or information or from a bill of particulars that the offense was committed in more than one district or division and if the court is satisfied that in the interest of justice the proceeding should be transferred to another district or division in which the commission of the offense is charged."

Court set forth its reasons for making this transfer.² After the transfer of the criminal case, the court granted the motion now before us, dismissing the equity suit "in the interest of justice, just as the same facts in the companion criminal prosecution required its transfer to another district." 7 F. R. D. 456, 465.

Is it not incongruous that that which "the interest of justice" demanded in the criminal prosecution is beyond the power of a court in a civil suit against the same defendants on the same transactions?³

Of course Congress may leave no choice to a court to entertain a suit even though it is vexatious and oppressive for the plaintiff to choose the particular district in which he pursues his claim. But such limitation upon the power of courts to administer justice ought not to be lightly drawn from language merely conferring jurisdiction. The manner in which jurisdictional provisions are appropriately to be read is illustrated by our decision in *Massachusetts v. Missouri*, 308 U. S. 1, where this Court recognized "considerations of convenience, efficiency and justice" even when a State invoked the Court's original jurisdiction in what was concededly a justiciable controversy. 308 U. S. at 19. I do not find in the

² "I do not question the motive of the Government in instituting the prosecution in this district.

"But I am satisfied that a trial here would impose unnecessary hardships on the defendants and entail unjustifiable expense which it is the object of the new rules of criminal procedure, and especially of the rule under discussion, to avoid. Altogether the facts spell out the vexatiousness and oppressiveness which the Supreme Court has warned us to eschew in matters of this character." 7 F. R. D. 393, 402-403.

³ Cf. L. Hand, J., in *United States v. Aluminum Co. of America*, 148 F. 2d 416, 429: "In *United States v. Hutcheson*, 312 U. S. 219, 61 S. Ct. 463, 85 L. Ed. 788, a later statute in pari materia was considered to throw a cross light upon the Anti-trust Acts, illuminating enough even to override an earlier ruling of the court."

scheme of the anti-trust acts and of their relevant legislative history the duty to exercise jurisdiction so imperative as to preclude judicial discretion in refusing to entertain a suit where "the interest of justice" commands it.

Defendants in an anti-trust suit may no doubt attempt to resort to delaying tactics by motions claiming unfairness of a particular forum. Neither must we be indifferent to the potentialities of unfairness in giving the Government a wholly free hand in selecting its forum so long as technical requirements of venue are met. See, *e. g.*, *The Railway Shopmen's Strike Case*, 283 F. 479. All parties to a litigation tend to become partisans, and confidence in the fair administration of justice had better be rested on exacting standards in the quality of the federal judiciary. Federal judges ought to be of a calibre to be able to thwart obstructive tactics by defendants and not be denied all power to check attempted unfairness by a too zealous Government.

I find nothing in the anti-trust acts comparable to the considerations which led this Court to conclude that the provisions of the Federal Employers Liability Act were designed to give railroad employees a privileged position in bringing suits under that Act. See, especially, concurring opinion in *Miles v. Illinois Cent. R. Co.*, 315 U. S. 698, 705.

I am of opinion that the District Court had power to entertain the motion on the basis of which it entered the judgment.

MR. JUSTICE BURTON joins this dissent.